BRAZILIAN CLAIMS TO A 200 MILE TERRITORIAL SEA; APPRAISAL IN PUBLIC INTERNATIONAL LAW

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Restrictive Clauses in Land Transfers:
Can: Abolished by Statute
Interpretation Key

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CHAPTER 1

Introduction

"The historic function of the law of the sea has been recognized as that of protecting and balancing the common interests, inclusive or exclusive, of all peoples in the use and enjoyment of the ocean."

Myres S. McDougal[1]

The historic function of the law of the sea referred to by Professor McDougal has not been and is not being fulfilled in the contemporary world community with respect to many problems relating to the use of the sea, particularly the limits of the territorial sea and exclusive fishing zones. A brief study of the territorial sea claims ranging from 3 to 200 miles and fishing zone claims of similar areas for the exclusive use of nationals of the coastal state makes this conclusion inescapable. These conflicting claims reflect a basic clash between major maritime and distant-water fishing states and, generally, smaller, land powerful states desiring maximum control over and economic benefit from their coastal areas. The clash has intensified, particularly in the past 20 years, with seemingly continuous escalation of unilateral pronouncements of limited and comprehensive claims to the waters, seabed and subsoil adjacent

to the coastal states. Negotiations have now been significantly impeded by objections from the maritime states. This clash between maritime and coastal states has been characterized by Professor W. Paul Gormley as the most important unresolved controversy involving the public law of the sea facing the world community.[2]

The purpose of this thesis is to consider the recent 200 mile territorial sea claims of Brazil under the standards of public international law. At the present time Brazil's claims are probably creating the greatest concern among the maritime states because of her long coastline, off shore islands and the comprehensive nature of the claims.

CHAPTER II

SOURCES OF INTERNATIONAL LAW

Criteria utilized by the International Court of Justice to resolve problems of international law are set forth in Article 38 of the Statute of the International Court, which states:

"1. The Court, whose function it is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations;
   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto."

A. International Conventions

The conventional laws of the sea, which are based on the express agreement of states, are established through international conferences, the 1958 Geneva Conventions, which codified four conventions on the high

Seas;[5] The Convention on the Territorial Sea and the Contiguous Zone;[6] The Convention on Fishing and Conservation of the Living Resources of the High Seas;[7] and the Convention on the Continental Shelf.[8] Such law-making treaties are, however, considered law only for the contracting parties.[9]

B. International Custom

International custom is the most important source of the international law of the sea.[10] Professor Lauterpacht stresses that custom must not be confused with usage.

> "In everyday life and language both terms are used synonymously, but in the language of the international jurist, they have two distinctly different meanings. International jurists speak of a custom when a clear and continuous habit of doing certain actions has grown up under the aegis of the conviction that these actions are, according to International Law, obligatory or right. On the other hand they speak of a usage when a habit of doing certain actions has grown up without there being the conviction that these actions are, according to International Law, obligatory or right. Some conduct of States concerning their international relations may therefore be used without being the outcome of customary International Law."[11]

This conviction of "obligatory or right" actions described above has been characterized by Professor Hillison as an element of "moral oughtness" ascribed to past uniformities in conduct.[12]

There is no precise length of time required for the

existence of [illegible] in order for customary international law to evolve.[12] On the time required issue, Professor Lauterpacht states:

> "As usages have a tendency to become customs, the question presents itself: at what stage does a usage carry into custom? This question is one of fact, not of theory. All the theory can say is this: Whenever and as soon as a line of international conduct frequently adopted by States is considered legally obligatory or legally right, the rule which may be abstracted from such conduct is a rule of customary International Law."[14]

The consent of all nations at all times is not required for the existence of international law. In discussing "common consent" as the basis of law, Lauterpacht states:

> "'Common consent' can...only mean the express or tacit consent of such an overwhelming majority of the members that those who dissent are of no importance as compared with the community viewed as an entity in contradistinction to the wills of its single members. The question whether there be such a common consent in a special case is not a question of theory, but of fact only. It is a matter of observation and appreciation and not of logical and mathematical decision,..."[15]

Once a customary international rule of law has come into existence, the question of its lifespan arises. Lauterpacht has written:

> "...no State can at some time or another declare that it will in future no longer submit to a certain recognised rule of the Law of Nations. The body of the rules

> of this law can be altered by mutual consent only, not by a unilateral declaration on the part of any State."[6]

Consent to new juridical claims or alteration of existing rules by states may arise by implication through silence and acquiescence. Professor Hyde describes such acquiescence as:

> "The requisite acquiescence on the part of individual States has not been reflected in formal or specific approval of every restriction which the acknowledged requirements of international justice have appeared, under the circumstances of the particular case, to dictate or imply. It has been rather a yielding to principle, and by implication, to logical applications thereof which have begotten deep rooted and approved practices. Moreover, such a yielding seems to be inferred from the absence of objections to recurrent acts assertive of freedom to commit particular forms of conduct, or to apply principles in a particular fashion."[7]

Professor Hyde further emphasized the juridical significance of failure to make appropriate objection by stating:

> "...acquiescence in a proposal may be inferred from the failure of interested States to make appropriate objection to practical applications of it. Thus it is that changes in the law may be wrought gradually and imperceptibly like those which by process of accretion alter the course of a river and change and old boundary."[8]

When should a state object to a practice to prevent or control acceptance of the practice as a rule of international law? The American Law Institute's The Foreign

Relation law of the United States Judicature:

> "A state subjects a person to its law when it provides, by statute or otherwise, that its law is applicable to him as well as when it actually applies its law to him through its courts or other law enforcement agencies."[19]

It follows then that a territorial sea claim applies most definitely to all major maritime states therefore a coastal state subjects maritime states to its law upon the effective date of the law.

C. General Principles of Law

The meaning of "general principles of law" has been the subject of substantial debate,[20] but it has been written:

> "If any real meaning is to be given to the words 'general' or 'universal' and the like, the correct test would seem to be that an International Judge before taking over a principle from private law must satisfy himself that it is recognized in substance by all the main . stems of law and that in applying it he will not be doing violence to the fundamental concepts of any those systems."[21]

In addition to a study of the various legal systems to ascertain general principles, such general principles may become apparent during discussions at international conferences which are attended by the vast majority of the states of the world.

Where there is no conventional or customary law in point on an issue in dispute the International Court of

Justice has resorted to the general principles of law in order to resolve the dispute. In the law of the sea area, the Anglo-Norwegian Fisheries Case[20] and the North Sea Continental Shelf Cases[22] are examples of cases in which general principles were utilized as a source of law. Principles announced by the Court in both decisions will be discussed later in this thesis.

D. Judicial Decisions and Teachings of the Most Highly Qualified Publicists

This category is listed separately in Article 38 of the Statute of the International Court of Justice but the judicial decisions and writings are not generally considered to be an independent source of international law. Rather the judicial decisions of important states afford evidence of international custom,[24] and the teachings perhaps are most relevant in judicial analysis to ascertain legal principles.[25]

CHAPTER III

THE FORMATION AND TERMINATION OF THE BRAZILIAN CLAIM TO A TERRITORIAL SEA

A. Brazil's Claim: Background

Brazil's independence from Portugal was proclaimed in 1822.[26] In the ensuing years, Brazil adopted in principle the three-mile territorial sea limit. This was the limit adopted for World War I neutrality purposes, in August 1914.[27] The rules of neutrality adopted by Brazil did not affect passage through its territorial waters of belligerent warships and their prizes.[28] During the Conference for the Codification of International Law, held at the Hague in 1930, which Conference was unable to agree upon a permissible breadth for the territorial seas, the Brazilian delegate, Mr. De Vianna-Kolsch, advised the Second Committee that the Brazilian Delegation would accept a territorial belt of six miles for all purposes.[29] In 1934, regulations were issued which governed visits by foreign warships to Brazilian ports and territorial waters during peacetime. These regulations included prohibition of foreign submarines entering Brazilian ports or territorial waters while submerged, or submerging while in port or territorial waters.[30] These regulations also proscribed overflight by foreign military

aircraft belonging to foreign warships, of Brazilian land or waters without prior authorization[31] and prohibited route alteration without authorization.[32]

With the outbreak in Europe of World War II, Brazil issued further neutrality regulations. Simple passage through her territorial waters of warships and prizes of belligerents remained permissible[33] but armed belligerent submarines were not allowed to remain in the territorial waters absent bad weather conditions or damage to the submarine. As long as the submarines were in Brazilian waters, they were required to navigate on the surface.[34]

Port Officers Regulations issued in 1940 reaffirmed the three-mile territorial sea limit and provided for drawing the base line across bays, inlets, and the like where points on either side do not exceed 12 miles.[35] These regulations also contained pollution control in the form of a prohibition of throwing rubbish, cinders, oil or other waste matter into the waters of a port or waterway.[36]

A note verbale from the Brazilian Minister of Foreign Affairs to the Norwegian Legation in Rio De Janeiro in 1950 stated that Brazil continued to maintain a 3-mile territorial sea with a 12 mile fishing zone.[37]

In 1950 Brazil claimed exclusive jurisdiction and dominion over the continental shelf adjoining its continental territory and islands on the basis that the continental

shelf is in reality submerged territory and "constitutes one geographical unit with the land."[38] The decree further cited as authority the unilateral shelf claims of the United States on 28 September 1945, Mexico on 29 October 1945, Chile on 23 June 1947, Argentina on 11 October 1946, and Peru on 1 August 1947.[39] The decree specified that rules governing navigation in the waters covering the continental shelf would continue without prejudice to any further rules that might be made, especially regarding fishing in the area.[40] There were apparently no objections to the decree inasmuch as it did not extend national sovereignty over the epicontinental seas beyond generally acceptable territorial water limits or interfere with the right to fish in the waters.[41]

The first multiparty declaration of expanded jurisdictional claims which later affected the evolution of Brazil's claims was the Declaration of Santiago on the Maritime Zone (hereafter referred to as the Santiago Declaration), which is signed on August 18, 1952. Citing the need for conservation of the natural resources of the sea for the needs of their peoples, the parties made the following comprehensive jurisdictional claim:

> "(II) The Governments of Chile, Ecuador and Peru therefore proclaim as a principle of their international policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent

> to the coast of its own country and extending not less than 200 nautical miles from the said coast.
>
> "(III) That such jurisdiction and sovereignty over the zone thus described includes sole sovereignty and jurisdiction over the sea floor and subsoil thereof."[42]

The positions of these parties solidified in 1954 with a supplementary convention wherein the parties agreed, inter alia, to not "enter into any agreements, arrangements or conventions which imply a diminution of the sovereignty over the said zone."[43]

In the Second United Nations Conference on the Law of the Sea in Geneva in 1960, Brazil indicated views sympathetic with the coastal state interests reflected in the Santiago Declaration, by co-sponsoring an amendment to the Canada and United States proposal giving a state the right to claim a six-mile territorial sea plus a fishing zone extending up to 12 miles from the territorial sea baseline.[44] The amendment gave the coastal state

> "the faculty of clairing preferential fishing rights in any area of the high seas adjacent to its exclusive fishing zone when it is scientifically established that a special situation or condition makes the exploration of the living resources of the high seas in the area of fundamental importance to the economic development of the coastal state or the feeding of its population."[45]
>
> "3. A special situation or condition may be deemed to exist when:
>
> (a) The fisheries and the economic

development of the coastal State or the feeding of its population are so manifestly interrelated that, in consequence that State is greatly dependent on the living resources of the high seas in the area in respect of which preferential fishing is being claimed."[46]

"9. The Commission will determine on the basis of scientific criteria whether special conditions exist after a hearing at which both the coastal state and fishing states concerned shall have the right to present all relevant evidence, technical, geographical, biological and economic.

10. The Coastal State, to the extent and for the period of time determined by the Commission, shall have preferential fishing rights in the area in question, under such limitations and to such extent as the Commission finds necessary by reason of the dependence of the coastal state on the stock or stocks of fish, while having regard to the interests of any other state or states in the exploitation of such stock or stocks of fish."[47]

The amendments were adopted by a vote of 58 in favor, 19 against with 10 abstentions.[48] The United States, United Kingdom, Denmark, France, Iceland, Korea, and Norway were major fishing nations which voted in favor of the amendments while the Soviet bloc and Japan opposed it.[49] Brazil voted in favor of the Canada-United States proposal as amended but the proposal failed by one vote to achieve the necessary two-thirds majority for adoption.[50]

Several of Brazil's Latin American neighbors have had extensive territorial sea claims for some time. Chile claims 50 kilometers,[51] and El Salvador,[52] Ecuador[53] and Peru[54]

claim 200 miles. In 1966 Argentina joined the 200 mile territorial sea club.[55] A communication from the Foreign Relations Minister to the President of Argentina accompanied the bill prior to enactment into law. It pointed out the fundamental importance of precisely defining the extent of national territory and stated as one reason therefore, "the present extractive activities of foreign vessels in Argentine waters constitute a serious problem which cannot be ignored."[56]

The General Assembly established an Ad Hoc Committee in December 1967 to study the scope and various aspects of the item entitled,

> "Examination of the question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and the use of their resources in the interests of mankind."[57]

The Ad Hoc Committee held three sessions from 18 March to 30 August 1968.[58] During the discussion and voting by the committee it became apparent that Brazil was aligning itself with the coastal state, developing country interests rather than with the major maritime, developed states. The Minister For Foreign Affairs of Brazil, Mr. Magalhaes Pinto's speech to the Ad Hoc Committee on 19 August 1968, brings this point home. He stated in part:

> "Unfortunately, in view of the unequal distributions of scientific and technological capability among countries,

> the exploitation of the ocean might remain the monopoly of a few countries that were in the forefront of scientific progress. The developing countries would therefore have to exert the utmost effort if they wished to share in the blessings bestowed by scientific knowledge."[59]

> "Every form of discrimination [in exploration and exploitation of the sea-bed] was intolerable, and the most dangerous form of discrimination would be one that benefited exclusively the economically and technologically advanced nations."[60]

Mr. Pinto further emphasized the need to adopt precise and uniform criteria to delimit national sovereignty under the waters so as to not frustrate establishment of an equitable legal regime on the sea-bed beyond limits of national jurisdiction. Such precision was necessary for easy verification and control, therefore, the "geomorphic concept" of the continental shelf could not provide the only basis for definition of the area for the exercise of national sovereignty. He suggested that the principles of the Geneva Convention on the Continental Shelf as well as "national regulations in force and of the rightful interests of economic development and national security of the coastal state" be considered.[61]

In January 1969, Brazil, Argentina, Columbia and Panama sent observers to a meeting in Peru, between Chile, Ecuador and Peru. Discussions were conducted in camera but they reportedly concerned establishment of common schedules of fines and procedures for handling violation of their

territorial sea regulations. The conference committed to the decision to have a group of jurists selected by the three participants study these matters.[62]

Brazil extended its territorial sea claim to 12 miles on April 25, 1969, effective as of April 25, 1964.[63] No reasons or juridical bases for the extension were included within the decree.

Shortly after Brazil made its 12-mile claim, her neighbor, Uruguay, also enlarged its claim to 12 miles.[64] The preamble to its decree stated that it was the right of each state to set its territorial waters limits, up to reasonable limits, taking into account "geographical, geological and biological factors as well as the economic needs of its people and its security and defense."[65] The preamble went on to state that Uruguay had repeatedly supported the 12-mile rule which it considered compatible with the Territorial Sea Convention. Their prior law of February 21, 1963, fixed a 6-mile territorial sea and 6 additional miles as a contiguous zone.[66] The decree concluded, however, "that from 1963 to the present, the evolution of Maritime Law has attained a generalization as to the rule of a territorial sea of twelve maritime miles...."[67] Thus in May 1969 Uruguay concluded that a 12-mile territorial sea was the proper limit. They did, however, state that their formula was to be without prejudice to future provisions which may be necessary regarding extension of the territorial waters depending upon "the development of Public International

Law and the requirements of national sovereignty."[68] Some seven months later Uruguay apparently concluded that public international law or their national sovereignty requirements had changed because they enlarged their territorial sea claim to 200 miles in December 1969.[69]

B. The Brazilian Territorial Sea Decree-Law of March 26, 1970[70]

On March 26, 1970, Brazil promulgated its present territorial sea claim, which is the subject of inquiry in this thesis. The Decree-Law contains a preamble setting forth its juridical bases for the enlarged claim, plus four substantive articles, all of which will be discussed separately.

The Preamble

The Preamble states as follows:

> "WHEREAS:
>
> The special interest of coastal states in maintaining the productivity of the living resources of the sea areas adjacent to their coasts is recognized by international law;
>
> Such interest can be effectively protected only by the exercise of the sovereignty inherent in the concept of territorial sea;
>
> All States have the competence to fix their territorial seas within reasonable limits, taking into account geographical, geological, and biological factors, as well as the needs of their populations and their security and defense;"[71]

The first paragraph thus is in effect stating that

a coastal state has a legitimate conservation of resources interest in the adjacent seas. The second paragraph states that the conservation interest can only be properly protected by the sovereign powers exercisable in a territorial sea.

The third paragraph is the real essence of the claim, a statement of the unilateral rights of states to fix their territorial sea limits. The paragraph is essentially the same as principle 2, Part A of the Principles of Mexico on the Juridical Regime of the Sea, adopted February 3, 1956, by the Council of Jurists in Mexico City.[72] The entire resolution including principle 2 was approved by the council by a vote of 15 in favor, 1 against (the United States), and 5 abstentions.[73] The third paragraph also was virtually the same as promulgated by Uruguay in its decree of May 1969.[74]

Article 1. The Territorial Sea Breadth and Determination of the Baseline

Article 1 states a territorial sea claim of 200 nautical miles in breadth measured from the low-water line of the Brazilian continental and insular coast. The sole paragraph following Article 1 relates to the drawing of straight baselines. It states:

> "In places where the coast line has deep indentations or projections, or where a chain of islands exists along the coast and in its immediate vicinity, the method of straight baselines shall be adopted, joining appropriate points for drawing the line from which the breadth of the territorial sea shall be measured."[76]

The nautical chart promulgated by the Brazilian government subsequent to this decree indicates that the 200-mile territorial sea claim includes the Brazilian possessions of Atol Das Rocas, Ilhs Fernando De Noronha, Is Martin Vaz, Trindade, and Penedos de S. Pedro e S. Paulo.[77] Inclusion of these islands results in a continuous territorial sea extending approximately halfway across the Atlantic Ocean to the African continent.[78] Appendix A is a copy of a portion of the Brazilian chart.

Article 2. The Air Space, Bed and Subsoil of the Territorial Sea

Brazil extended its sovereignty to the air space above the territorial sea as well as to the bed and subsoil below the sea.[79] The only reference to regulation in the decree-law was contained in article 4 which stated in part that the Brazilian Government will regulate research and exploration activities, and paragraph 3 of article 4, which stated special regimes of research and exploration in the territorial sea may be defined by international agreements in principle on a reciprocal basis.[80]

Article 3. Innocent Passage

This article recognizes the right of innocent passage for ships of all nationalities in the Brazilian territorial sea.[81] Paragraph 1, thereof, defines innocent passage as "...the simple traversing of the territorial sea without (the

exercise of any activities other than those connected with navigation and without stops other than those incidental to navigation."[82]

Paragraph 2 requires that all ships comply with Brazilian regulations designed to guarantee peace, order, and security as well as prevent pollution of the waters and harm to the sea resources.[83] Perhaps the most significant implementing regulation was issued by the Brazilian National Nuclear Energy Commission (CNEN), providing rules for the use of Brazilian ports, bays and territorial waters by nuclear-powered ships.[84] CNEN has the statutory power in Brazil for,

> "Establishing safety regulations and standards concerning the use of radiation and nuclear materials, those relating to the installation and operation of establishments producing nuclear material or utilizing nuclear energy and its applications, and checking that the above-mentioned regulations and standards are observed."[85]

The regulations apply to all requests for clearance to territorial waters and use of ports and bays by nuclear powered ships,[86] but the criteria established for clearance authorization apparently do not apply to ships of war.[87] A pollution control measure included in this regulation stated that the government of the country of registry must guarantee that the vessel would not dispose of radioactive wastes while in the Brazilian territorial waters.[88]

Paragraph 3 of Article 3 states that the Brazilian

Government will issue regulations deemed necessary for reasons of security which must be observed by "warships and other ships of foreign States."[89]

Article 4. Regulation of Fishing, Research and Exploration Activities

As indicated by the title of this subsection, Article 4 states that the Brazilian Government will regulate fishing, keeping rational utilization and conservation of the living resources of the territorial sea in mind, as well as regulate research and exploration activities.

a. Fishing activities

Paragraph 1 indicates that zones may be established in which only Brazilian vessels may fish. Paragraph 2 goes on to indicate that in zones left open to fishing by foreign vessels, fishing is permitted only when the vessels are registered and authorized to fish, and that the vessels must respect Brazilian regulations while so fishing.[90] There was substantial delay on the part of the Brazilian Government in delimiting the exclusive fishing zones and the areas and conditions for foreign vessel fishing. President Medici did, however, sign the promised regulatory decree on March 29, 1971.[91] The regulations allow only national fishing vessels to fish the inner 100 mile strip of the territorial sea around the island as well as the continental shores.[92] Foreign fishing vessels may fish in the outer zone[93] with the limitation that only national fishing vessels may exploit the "crustacean

and other live resources dependent on the subjacent bottom of the Brazilian territorial waters..."[94]

Foreign fishing vessels are to be issued authorizations for a 1 year maximum term which are renewable if certain stipulation contained in the Decree are observed.[95] The types of permissible fishing protocols and equipment to be utilized are indicated on the authorization.[96] The authorizations are not valid until registration and operation fees are paid.[97] Registration fees are the equivalent of US $500[98] and the operation tax is equivalent to US $20 per net ton of the vessel's registration.[99]

The requests for fishing authorization must include sponsorship of a "reliable Brazilian legal entity" which will assume legal and financial responsibility for the activities of the vessel.[100] The requests must further provide documentation of the identity of the vessel and crew plus the equipment, routes and fishing methods to be employed. There must also be space on board the vessel for Brazilian officials should they desire to accompany the fishing activities.[101]

The foreign vessel captain's responsibility includes utilization of Brazilian sailing charts, knowledge and respect for Brazilian laws and regulations, with special emphasis upon those relating to fishing and prevention of water pollution, utilization of only the authorized method

and equipment, plus reporting of time of arrival and departure from Brazilian waters as well as the vessel's position in the waters.[102]

Sanctions imposed for violation of the fishing regulations are provided by those specified for smuggling, which includes impounding the vessel, her equipment and cargo, plus holding the captain criminally responsible.[103] The vessels are also subject to fines.[104]

Primary responsibility for enforcement of fishing control in the territorial waters rests with the Ministry of the Navy.[105] In carrying out this responsibility it is noted that a Navy task force of one cruiser, seven destroyers and two submarines was apparently dispatched to be in patrol positions upon implementation of the fishing decree.[106] Additionally the decree tasks all captains of national fishing vessels and the national merchant marine fleet with the duty to report foreign fishing vessels in the territorial waters.[107]

In view of the limited time which has transpired from the effective date of the fishing decree, there has been limited information reported on enforcement measures utilized by Brazil. A Taiwanese fishing trawler apparently has been arrested,[108] and a Tampa, Florida shrimping owner reported that a Brazilian warship fired machine-gun bullets over a group of seven United States shrimp trawlers and ordered them

out of the territorial seas. The Portuguese crew claimed that the vessels were 75 miles from the shore when the confrontation took place.[109]

In the first week of June, Brazil reported finding 16 boats in the zone extending from 100 to 200 miles from shore. All of these boats apparently returned to international waters after being warned by the Brazilian Navy.[110]

The Brazilian Territorial Sea Decree-Law indicates that an alternate fishing regime may be established by international agreement on the basis of reciprocity.[111] Apparently France and Trinidad and Tobago have expressed interest in negotiating an agreement, and bilateral conferences were scheduled for July 1971.[112]

b. Research and exploration activities

As of the date of this writing there have, apparently, been no regulations issued governing research and exploration activities in the territorial sea. The Brazilian Decree-Law does, however, provide for international agreement on the regimes for research and exploration on the same basis as fishing, mentioned above.[113]

CHAPTER IV

INTERNATIONAL LAW IMPLICATIONS OF THE DELIMITATION OF MARITIME BOUNDARY SEA AREAS

"The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law."[114]

A. Delimitation of Boundaries Between Inland Water and Territorial Seas

International Conventions

Article 3 of the Territorial Sea Convention provides that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast marked off on official large scale charts recognized by the coastal State.[115] For coast-lines other than the normal situation, Article 4 of the same convention provides in part:

"1. In localities where the coast is deeply indented or cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea

is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters."[16]

In view of the nature of the mouth of the Amazon River, the provisions of the Territorial Sea Convention on rivers and bays are also relevant. Article 13 provides:

"If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks."[17]

The Amazon does not flow directly into the sea but rather the river has many outlets. Indeed the river mouth may be characterized as an estuary. As a possible estuary the Territorial Sea Convention provisions on Bays state in part:

"2. ...a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark

> of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation."[118]

Inasmuch as Brazil is not a party to the Territorial Sea Convention, application of the provisions cited above to the Brazilian claim depends upon whether the provisions constitute customary international law.

2. International Custom

a. The normal baseline

The precedent for the adoption of a low-water line as the normal baseline by the Territorial Sea Convention no doubt was the fact that the low-water line had been adopted by most states prior to the Conference. The Preparatory Committee to the 1930 Hague Conference adopted the low-water mark as its proposal for a general rule.[119] The International Court of Justice recognized this practice in its decision in the Fisheries Case, when it stated:

> "The Court has no difficulty in finding that for the purpose of measuring the breadth of the territorial sea, it is the low-water mark, as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of States."[120]

Prior to the 1958 Conference, the International Law Commission's draft Article 4 commentary expressed the

opinion that "according to international law in force, the extent of the territorial sea is measured either from the low water line along the coast or..." (Article 5 circumstances opinion).[121] As noted in the preceding section, the Territorial Sea Convention did adopt the normal baseline recommendation of the International Law Commission.[122]

The low-water mark normal baseline evolution is quite natural, as, in the view of the International Court, it is the criterion most favourable to the coastal state.[123]

b. Straight baselines

In the Fisheries Case the primary issue in dispute related to the manner in which Norway drew her baselines. After discussing the highly irregular nature of the Norwegian coastline, the court stated:

> "Where a coast is deeply indented and cut into, as is that of Eastern Finnmark, or where it is bordered by an archipelago such as the "skjaergaard" along the western sector of the coast here in question, the base-line becomes independent of the low-water mark, and can only be determined by means of a geometric construction. In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; nor can one speak of exception when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method

> Nor can one characterize as [illegible] to the rule the very many derogations which would be necessitated by such a [illegible] coast. The rule would disappear under the exceptions....The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight base-line method and that they have not encountered objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done not only in the case of well-defined bays but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters."[24]

Thus the straight base-line method had been adopted by states without objection prior to the 1951 decision on the case of Norway. The four specific criteria set forth by the court for determining the validity of a specific base-line are summarized by Sir Gerald Fitzmaurice as the principle that base-lines must:

> "(1) follow the general direction of the coast; (2) only enclose waters genuinely possessing the character of internal waters; (3) lie 'inter fauces terrarum'; and (4) be moderate and reasonable, and drawn in a reasonable manner."[25]

Sir Fitzmaurice considers these criteria to be different [illegible] of the basic principle of the close dependence

of the territorial sea upon the land.[126]

The International Law Commission interpreted the Court's judgment on the drawing of baselines to express the law in effect, and draft article 5 of its 1956 draft was based on the judgment.[127] The International Law Commission attempted to make more specific standards than contained in the Fisheries Case[128] but these attempts were deleted in Article 4 of the Territorial Sea Convention,[129] perhaps because of the opposition of states such as the Soviet Union who believed that the attempt to set a maximum length for a single straight line was arbitrary and did not allow coastal states sufficient latitude.[130]

c. Rivers

Regarding customary international law applicable to the Amazon River, the view of the Second Commission of the 1930 Hague Conference with respect to rivers generally was that if the river flows into an estuary the rules applicable to bays apply.[131] Article 13 of the 1956 draft of the International Law Commission specified that if the river flows into an estuary, Article 7 (Bays) applies.[132] The Netherlands recommended deletion of draft article 13 on the basis that it was unclear what the exact meaning of "estuary" was, or the difference between a river flowing into an estuary and a river flowing into the sea.[133] The United States also proposed deletion of the estuary

paragraph on the basis that the term "estuary" is without precise legal or geographic meaning. Additionally the United States considered that the text "Article 7 shall apply" was unnecessary and misleading.[134] Despite the Netherlands and United States proposals the First Committee adopted the Article 13 as drafted by the Commission.[135] The vote on the "estuary" paragraph of draft Article 13 at the Nineteenth Plenary Meeting was 37 in favor, 20 against, with 17 abstentions, hence the estuary provision was not adopted. Article 13, as adopted by the Conference and included in the Territorial Sea Convention, therefore, made no specific provision for a river which did not flow directly into the sea.

In 1961, Uruguay and Argentina agreed to a joint declaration to establish the limits of the Rio de la Plata, fixing the baseline to measure the territorial sea.[137] The United Kingdom, United States and the Netherlands protested on the ground that the declaration was contrary to international law and that Article 13 did not apply to Rio de la Plata.[138] The United States note expressed the view that Article 13 relates only to rivers flowing directly into the sea, and does not apply to the River Plate which flows into an estuary or a bay.[139]

B. Delimitation of the Breadth of the Territorial Sea

1. International Conventions

The Territorial Sea Convention is the only international convention with large scale state participation making any provision for the limits of the territorial sea. Its provisions have so little content that its value is questionable. Article 1 simply states that a State's sovereignty extends beyond its land and internal waters to a belt of sea adjacent to its coast which is described as the territorial sea.[140] Article 6 states the outer limit of the territorial sea to be a line every point of which is the same distance from the nearest point of the baseline as the breadth of the territorial sea.[141] An island is defined as a "naturally formed area of land, surrounded by water, which is above water at high-tide."[142] The island's territorial sea is measured in the same manner as the continental lands.[143]

2. International Custom

There have been no judicial decisions considering the legality of a State's claim to delimit the breadth of its territorial Sea, however, the Fisheries Case announced certain principles to consider in ascertaining the legality. These principles will be set forth in following paragraph 3.

The concept of the territorial sea has a long and diversified history of development which has been the subject of many dissertations.[144] For the purposes of this thesis, complete recall of this history, is not considered essential. Suffice it to say that in 1793, Secretary of State Thomas Jefferson, in a note to the British Minister, Mr. Hammond, commented upon the various claims in existence at the time. Mr. Jefferson stated that he believed that the smallest distance claimed was the utmost range of a cannonball, which was usually considered to be one sea league. He then advised that the President had directed that one sea league or three geographical miles from the sea shores be considered as subject to the territorial protection of the United States, pointing out that since no state claimed less there could be no opposition to such a claim.[145] By 1900, 20 of the 21 states claiming or acknowledging a territorial sea had adopted or acknowledged the three-mile or one league limit.[146] Mr. Bernard Heinzen, who was a member of the United States delegation to the 1958 Geneva Convention on the Law of the Sea, has the opinion that the three-mile or one league limit was generally accepted as customary international law by 1930 because of the consent of virtually all coastal states claiming a territorial sea.[147] Several states such as Russia[148] attempted to make claims in excess of three miles from 1900 to 1930 when the Hague Conference was held but the three

mile limit was vigorously upheld by coastal powers so that there were no assertions of expanded territorial jurisdiction which effectively prevailed for a substantial period of time.[149]

In 1930 the Hague Conference dealt in part with the breadth of the territorial sea. While there were only a few states claiming more than a three-mile territorial sea when the Conference convened, agreement was not reached on a permissible breadth of the territorial sea.[150] The disagreement revolved around the insistence of some nations upon the three-mile limit while others desired contiguous zones and the Scandinavian countries insisted upon a four-mile limit based upon historical claims.[151] Mr. Heinzen is of the opinion that the refusal of Great Britain and a few other nations to recognize contiguous zones and the Scandinavian historical claims to four miles was the primary reason for the failure of the Conference.[152] Whether Mr. Heinzen is correct or not, it is readily apparent that the permissible limit to the territorial sea could have been restricted to no more than 6 miles if the delegations so desired, inasmuch as twenty of the thirty-eight states would accept three miles or three miles plus an adjacent zone; three wanted 4 miles; three wanted 6 miles; and eight wanted six miles plus an adjacent zone.[153] The USSR did not state its preference[154]

but had claimed 12 miles since 1924.[155] After the inability to arrive at agreement of a permissible breadth for the territorial sea became apparent, the Conference adopted a resolution requesting further study of the question of the breadth and recommending that the League of Nations convene a new conference on questions connected with the territorial sea as soon as it deemed it opportune.[156]

Following the failure of the Hague Conference a number of states enacted legislation establishing the breadth of their territorial sea. The three-mile territorial sea claim received an unexpected but damaging blow from the President of the United States in the form of the "Truman Proclamation". The "Truman Proclamation" was actually two separate proclamations issued on September 28, 1945, regarding United States jurisdictional claims beyond the limits of her territorial sea. One proclamation established "conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale."[157] The other proclamation involved a claim to jurisdiction over resources of the continental shelf. After stating the justification for the claim the proclamation stated, "... the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to

the United States, subject to its jurisdiction and control."[158] Both proclamations reaffirmed that the character of high seas in the affected areas and the right to free and unimpeded navigation were not affected by the claims.[159] Thus the United States made a limited conservation control claim and a proprietary claim to resources beyond the territorial sea limits. Other governments made no protests to the Truman Proclamation on the Continental Shelf, and its basic principles were included in the 1958 Continental Shelf Convention.[160]

Unilateral jurisdictional claims expanded rapidly after the Truman Proclamation. Christy and Scott categorize the subsequent proclamations into three groups: the first group being primarily concerned with sedentary fisheries such as pearl and oyster; the second group appeared concerned with mineral resources, chiefly oil; and the third group claimed the rights to the continental shelf and to the use of the seas above it.[161]

Examples of jurisdictional claims following the Truman Proclamation until the 1958 Geneva Conference on the Law of the Sea are as follows:

a. Mexico, a month and a day after the Truman Proclamation, claimed the continental shelf out to the 200-meter isobath and all natural resources existing there. This claim went beyond the claim of the United States

insofar as it claimed title to the shelf rather than just the resources of the shelf. The Mexican decree also claimed the right to establish, supervise, utilize and control closed fishing zones on the high seas for conservation purposes.[162]

b. Argentina, after stating the right of each nation to consider the entire extent of its epicontinental sea and the adjacent continental shelf as national territory, and citing the United States and Mexican proclamation/declaration as partial authority therefore, claimed sovereignty over the Argentine epicontinental sea, continental shelf, without affecting freedom of navigation.[163]

c. Chile, cited the claims of the United States, Mexico and Argentina and proclaimed sovereignty over the continental shelf adjacent to the continental and island coasts, regardless of the depth of the sea, including therein the natural riches of the shelf. Chile also claimed sovereignty over seas adjacent to it coasts necessary to protect the resources on, within and below the sea, especially all fisheries and whaling activities. The protection and control of the government was extended 200 miles from the coast. The declarations of sovereignty stated that the rights of free navigation on the high seas were not affected thereby.[164]

d. Peru cited the Truman Proclamation and the three other claims cited above as authority under international law for the right to proclaim "sovereignty and national jurisdiction over the entire extension of the submerged shelf as well as over the continental waters which cover it and the adjacent sea in the area required for maintenance and vigilance of the resources therein contained" and thenceforth declared sovereignty over the adjacent sea whatever its depth and to the extension necessary to reserve, protect, maintain and utilize the resources found in and below the waters. Limits of control and protection of the resources claimed were established as 200 miles from the coast. This claim also acknowledged the continued freedom of navigation.[165]

e. Saudi Arabia claimed jurisdiction and control over the subsoil and seabed in the Persian Gulf contiguous to its coasts. Freedom of navigation was not to be impeded.[166]

f. Costa Rica claimed sovereignty over the adjacent continental and insular shelf regardless of depth, proclaimed its rights and interests over the adjacent seas and established a protection zone out to 200 miles from the coast. Rights of free navigation were proclaimed.[167]

g. Honduras claimed a territorial sea of 12 kilometers but extended sovereignty to the continental or

insular shelf and overlaying waters regardless of depth without prejudice to the right of free navigation.[168] A protection and supervision zone of hunting, fishing, and exploitation of Honduran waters was extended 200 miles from the coast.[169]

h. Pakistan claimed the coastal seabed extending to the one hundred fathom contour into the open sea to be part of the territories of Pakistan.[170]

i. El Salvador claimed the adjacent seas 200 miles from its coasts and the corresponding air space, subsoil and continental shelf as part of its territory but claimed no restriction on the freedom of navigation.[171]

j. Brazil claimed the continental shelf adjoining her continental or insular territory as part of that territory subject to her exclusive jurisdiction and dominion. Navigation in waters covering the continental shelf was not altered but the decree indicated possible later rules regarding fishing in the area.[172]

k. South Korea proclaimed the Rhee line in 1952 closing its adjacent seas to a distance of 250 miles in which area Japanese vessels could not fish.[173]

It can readily be observed that the jurisdictional claims expanded rapidly from the limited, special purpose

claim of the United States to the comprehensive (except for freedom of navigation) 200 mile territorial sea claim of El Salvador some five years later. The above claims were made by single nation states but the Santiago Declaration claiming sole sovereignty and jurisdiction over the sea, sea floor and subsoil out to a minimum distance of 200 miles from the coasts of Chile, Ecuador and Peru broke the pattern by its multilateral form.[174]

With the diversity of national comprehensive and limited, special purpose claims rapidly expanding, efforts were made to establish the maximum permissible breadth of the territorial sea at the 1958 Geneva Conference. The Conference was preceded by extensive consideration of law of the sea problems by the International Law Commission.[175] The Commision's draft article 3 on the breadth of the territorial sea differed from the form of the other draft articles insofar as it stated the Commission's conclusions and recommendations rather than proposing specific language for discussion and inclusion in the resulting convention. Essentially Article 3 consisted of recognition that international practice was not uniform on delimitation of the territorial sea, that the Commission considers that international law does not permit extension of territorial seas beyond twelve miles, and the Commission's belief that

the breadth should be fixed by an international conference.[176] A state's extension of her territorial sea to a breadth ranging between three and twelve miles was not characterized as a breach of international law.[177] The most significant opinion was that an extension of the territorial sea beyond twelve miles "infringed the principle of the freedom of the seas, and was therefore contrary to international law."[178] The Commission came out "clearly against claims to extend the territorial sea to a breadth which, in its view, jeopardized the principle that has governed maritime law since Grotius, namely, the freedom of the seas."[179]

During the Conference itself, despite the fact that at least 40 of the 73 coastal states claimed no more than a one league territorial sea,[180] no permissible breadth could be agreed upon. This failure perhaps could be attributed in large part to the conflict in the positions of the two super powers, the Soviet Union and the United States, rather than the small bloc of Latin American states favoring the 200-mile limit. The Soviet Union wanted recognition of her 12-mile claim while the United States initially advocated the 3-mile claim. Because of recent hostilities with Israel, Arab states supported the 12-mile limit in an attempt to gain control over the Gulf of Aqaba.[181]

When it was apparent to the United States that

agreement could not be achieved on a 3-mile limit, the United States offered a proposal of a 6-mile territorial sea plus a 6-mile exclusive fishing zone. The fishing zone proposal had a provision allowing for continuance of historic fishing rights indefinitely.[182] This provision made the proposal unacceptable to some of the fishing nations which the United States was attempting to attract to this proposal.[183] Accordingly, the proposal failed passage by a final vote of 45 to 35, with 7 abstentions.[184]

Upon the conclusion of the 1958 Conference a resolution was adopted to request that the General Assembly study the advisability of convening a second international conference for further consideration of unsettled questions.[185] The General Assembly accepted the Conference recommendation and called for the second conference in 1960 to further consider the questions of the breadth of the territorial sea and fishery limits.[186]

During the 1958 Conference the United Nations Secretariat prepared a synoptical table on the breadth and juridical status of the territorial sea and adjacent zones of states attending the Conference. This table was up-dated to 1 November 1959 in preparation for the 1960 Conference.[187] The table reflects territorial sea claims as follows:

Miles	States
3	22
4	3
5	1
6	10
9	1
10	1
12	13
50KM	1
200 Miles	1
In accordance with International law	5
Non specified	1

The numbers reflected do not equal the number of coastal states attending the Conference but simply reflect the claims of states supplying requested information to the Secretariat. Without stating an opinion as to the breadth of claims stated in terms of accordance with international law, it is still clear that more than half of the responding states made claims in excess of three miles.

With the territorial sea claims picture in existence at the time of the 1960 Conference it was fairly obvious that accord could not be achieved on three miles. Accordingly, early in the Conference, a United States-Canada proposal was introduced which was essentially the same as the six-mile territorial sea plus six-mile exclusiv

fishing zone proposal at the 1958 Conference. The difference was that the historic rights in the outer six-mile fishing zone were to be phased out rather than continue indefinitely.[188] The amendment by Brazil, Cuba and Uruguay to the United States-Canada proposal allowing preferential fishing rights claims by coastal states under certain scientific conditions was passed by two-thirds of the nations present.[189] This amendment caused Japan to change her vote from favoring the joint proposal to abstention because of objections from her fishing interests.[190] Ambassador Dean had obtained agreement from Ecuador to refrain from opposition to the proposal based on United States agreement to refrain from attempting to prove historic rights to fish in Ecuadorian waters. Since the United States was the only state with such a claim with respect to Ecuador, they were receptive. This agreement fell through after Ecuador insisted that the United States waive all claims against her in behalf of the United States and United States nationals based on Ecuador's seizures of American fishing vessels. Since the United States delegation could not accept this agreement,[191] Ecuador voted against the proposal.[192] Chile, which had previously indicated that it was free to vote favorably after the Brazil-Cuba-Uruguay amendment, changed to opposition after she was unable to obtain a release from Peru of her obligation to not enter into any agreements, arrangements or combinations

which imply a diminution of the sovereignty of the 200 mile zone, arising out of the 1954 Supplementary Convention between Chile, Ecuador and Peru.[193] With these final dramatics all running against the proposal the final vote was 54 in favor, 28 against, with 5 abstentions.[194] If one negative vote had abstained, the proposal would have been adopted and the problem of the permissible breadth of a territorial sea as well as the exclusive fishing zone problem would have been much closer to resolution under international law.

a. The practice of States since the 1960 Geneva Conference

This section categorizes claims arising since the 1960 Conference on the basis of the breadth of the present claim. Most states have not attempted to promulgate any substantial juridical basis for expanding their claims but an effort will be made to comment upon claims for which the states have offered justification.

1) Claims altering the breadth of the territorial sea.

a) Breadths of 3 to 6 miles

Of the five states making territorial sea claims in accordance with international law in 1960, three of them, New Zealand,[195] West Germany,[196] and Costa Rica[197] opted for the three-mile limit.

A substantial number of states either made no

territorial sea claims or did not advise the United Nations of their claims prior to the 1960 Conference. Also a number of states have obtained independence since 1960 and therefore have established new claims. States falling into the above categories which are now making three-mile claims are Barbados,[198] Congo(Kinshasa),[199] Cuba,[200] East Germany,[201] Fiji,[202] Guyana,[203] Malta,[204] Morocco,[205] Nauru,[206] Nicaragua,[207] Republic of Viet Nam,[208] Singapore,[209] and South Korea.[210] Iceland[211] has made a four-mile claim while Haiti,[212] the Ivory Coast[213] and Turkey[214] have made six-mile claims.[215]

Three states have enlarged their claims from three to six miles since the 1960 Conference. They are the Dominican Republic,[216] Tunisia,[217] and the Union of South Africa.[218]

Since it is quite clear that no substantial number of states is likely to object to any territorial sea claims in the 3-6 mile range, there has not been any real attempt to justify claims made within this range.

b) Breadths in excess of 6 miles to 12 miles

There were two states claiming limits in accordance with international law on the 1960 United Nations Synoptical Table which now claim a twelve-mile territorial sea. They are Iraq[219] and Monaco.[220] Actually Iraq's claim preceded the 1960 Conference and Monaco claimed three miles after

the Conference but prior to voting it up to the present twelve miles.[221]

The following new claims or claims not advising of territorial sea claims in 1960 all claim a twelve-mile territorial sea: Algeria,[222] Benin,[223] Congo (Cong.),[224] Cyprus,[225] Dahomey,[226] Equatorial Guinea,[227] Gambia,[228] Ghana,[229] Honduras,[230] Jamaica,[231] Kenya,[232] Kuwait,[233] Korea(South),[234] Malagasy Republic,[235] Maldive Republic,[236] Mauritania,[237] Mauritius,[238] Nigeria,[239] North Viet Nam,[240] Senegal,[241] Sierra Leone,[242] Somali Republic,[243] Southern Yemen,[244] Sudan,[245] Syria,[246] Tanzania,[247] Togo,[248] Trinidad and Tobago,[249] and Yemen.[250] The only justification for these claims discovered by the writer was Tanzania's. Tanzania simply stated that her claim was necessary "in the absence of uniformity in international practice relating to the extent of the territorial waters..."[251]

Of the states expanding their territorial sea claims to claims within the over six to twelve mile range, only Yugoslavia expanded to a ten-mile limit.[252] All the other states claimed twelve miles. These states are: Albania,[253] Cambodia,[254] Canada,[255] Ceylon,[256] Colombia,[257] Iraq,[258] Liberia,[259] Malaysia,[260] Mexico,[261] Pakistan,[262] and Thailand.[263] Once again reasons were generally not given or if any were given they were of the nature of "it has become necessary"[264] or "in recalling that Colombia adheres to the provisions of the Geneva Convention on the law of

the Sea...."[265]

c) Breadths in excess of 12 miles.

Claims in excess of 12 miles have thus far been restricted to Latin American and African states, with the African claims generally being more recent and more moderate than the Latin American claims. Congo(Brazzaville) has claimed 15 miles;[266] Cameroon has claimed 15;[267] Gabon, 25 miles;[268] and Guinea, 130 miles.[269]

Because Latin American states have made the most comprehensive territorial sea claims it is natural that they have made extensive efforts to legitimize them. The juridical bases for the claims of several of the states were discussed in the formulation and implementation chapter of this thesis. Additionally, in the past fourteen months there have been two Latin American conventions, in Montevideo and in Lima, which have issued their views on law of the sea matters. On the breadth of the territorial sea the Declaration of Montevideo[270] and the "Declaration of Latin American States on the Law of the Sea,"[271] essentially declared as a basic principle of law the rights of coastal states to establish the limits of their maritime sovereignty or jurisdiction in accordance with reasonable criteria having regard to geographical, geological and biological characteristics and the need to make rational use of its resources.

b. Conclusions regarding practice of States

Although the three-mile or one league limit was the only acceptable territorial sea limit in the early 1900's, as evidenced by the practice of states making claims, and writings of publicists indicating that states ascribed a sense of "moral oughtness" to not exceed the limit, it is clear that no such moral oughtness presently attaches to any specific limit. This conclusion is readily apparent by simply considering the diversity of claims. Insofar as the maximum permissible limit of a territorial sea, there is no customary international law. This conclusion is inescapable despite the earlier opinion of the International Law Commission that international law does not permit extension of the territorial sea beyond twelve miles.[272] The introduction of the Commission Report indicated that the Commission believed that its work could not distinguish as to which of its works were codification of international law and which were preparation of draft provisions not yet regulated by international law or sufficiently developed in the practice of states.[273] The Commission's commentary on draft Article 3 expressed the opinion that territorial sea claims in excess of twelve miles were contrary to international law because they infringed the principle of the freedom of the seas,[274] not

because of the practice of states. Recalling the wording of the Article 3 incorporated into the Territorial Sea Convention, there was no mention of claims in excess of twelve miles. Apparently there is no moral oughtness element attached to the twelve mile maximum limit because the brief look at state claims practice previously cited clearly indicates that the limit has been exceeded with accelerating frequency since the Commission's report. Prior to the report only El Salvador (200 miles) and Chile (50 KM) reported claims in excess of 12 miles.[275] Presently there are seven states claiming 200 miles and one each claiming 150 miles, 50 KM, 25 miles, 18 miles and 15 miles.[276]

The lack of a customary law regarding breadth of the territorial sea was reflected in the statement of Mr. John R. Stevenson, Legal Advisor of the Department of State, which discussed the idea that all states may fix their national jurisdiction within reasonable limits. He stated, "Since any state with good lawyers at its disposal can make a reasonable argument for virtually any limit, the ultimate result would be unlimited extension of national jurisdiction."[277] If there was a customary law with respect to the permissible breadth of territorial seas, good lawyers would have much difficulty making reasonable arguments justifying departures from the permissible breadth.

c. Territorial Sea Limits of Islands

It appears to be admitted in customary international law that an island has its own territorial sea. Jessup wrote in 1927 that the principle was clear.[278] It was part of a French proposal during the 1930 Hague Conference.[279] The International Law Commission's draft Article 10 proposed it,[280] and its commentary on the article stated that it applied both to islands situated in the high seas and in the territorial sea.[281] The Territorial Sea Convention, as noted earlier, did in fact codify this principle in Article 10.[282] Colombos cited Article 10 as the law on this point in 1967.[283]

3. General Principles of Law

The Second Committee of the 1930 Hague Conference considered the general subject of the territorial sea. Committee discussions revealed that all states admitted the principle of the freedom of navigation, with no differences of opinion.[284] The Committee also recognized that international law "attributes to each coastal state sovereignty over a belt of sea round its coasts," which must be regarded as essential for protection of the state's legitimate interests.[285] The coastal state sovereignty is limited by conditions established by international law, with the Committee example of the freedom of navigation principle's interrelation with the coastal state

belt of sovereignty resulting in the right of innocent passage.[286] There was agreement among the delegations on all of the above principles.[287]

The Fisheries Case reaffirmed the principle that the validity of a coastal state's delimitation of sea areas depends upon international law.[288] The Court continued to elaborate on considerations to be used in evaluation of a sea area claim, stating that, "...some reference must be made to the close dependence of the territorial sea upon the land domain. It is the land which confers upon the Coastal State a right to the waters off its coasts."[289] Therefore the Court concluded that the baselines must not depart to any appreciable extent from the general direction of the coast.[290] The Court indicated that coastal state economic factors are relevant in considering the validity of a baseline (or a territorial sea presumably).

> "Such rights (traditional fishing rights for Norwegian inhabitants), founded on the vital needs of the population and attested by the very ancient and peaceful usage, may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within the bounds of what is moderate and reasonable."[291] (Emphasis added)

Fitzmaurice considers that the specific criteria laid down by the Court to determine the validity of individual baselines were really different expressions

of the basic principle of the "close dependence of the territorial sea on the land domain."[292]

In 1956 the International Law Commission commented on various law of the sea principles. They stated that,

> "The principle generally accepted in international law that the high seas are open to all nations governs the whole regulation of the subject. No State may subject any part of the high seas to its sovereignty; hence no State may exercise jurisdiction over any such stretch of water. States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States. Freedom to fly over the high seas... [the Commission considers] follows directly from the principle of the freedom of the sea;..."[293]

The Commission set forth four freedoms which constitute part of the principles of freedom of the high seas in their draft Article 27. They included freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and the freedom to fly over the high seas.[294] The list of four was not intended to be comprehensive as the Commission further discussed the freedom to undertake scientific research on the high seas which was only limited by the obligation to refrain from acts which might adversely affect the high seas use by nationals of other states.[295]

There were regulations of the use of the high seas most of which the Commission stated were recognized

in positive international law, which were designed to protect the international community interests. Such rules enumerated by the Commission included the exercise of "certain policing rights," rights relative to conservation of living resources of the high seas; institution by a coastal state of a contiguous zone for the purpose of exercising well-defined rights; and rights of coastal states regarding the continental shelf.[296] Draft article 32 stated that warships on the high seas have complete immunity from the jurisdiction of states other than the flag state.[297] The commentary to this draft article indicated that this principle is generally accepted in international law.[298] Draft Article 49 elaborated on the freedom to fish, and stated:

> "All States have the right for their nationals to engage in fishing on the high seas, subject to their treaty obligations and to the provisions contained in the following articles concerning conservation of the living resources of the high seas."[299]

The commentary stated that the article confirms the principle of the right to fish on the high seas, to which there were no exceptions even in portions covering the continental shelf except regarding sedentary fisheries and fisheries carried on by equipment embedded in the sea floor.[300]

Draft article 27 became Article 2 of the High Seas Convention. It retained the four specified freedoms, labeled them general principles of international law and generally alluded to other freedoms which are recognized by the general principles of law.[301]

Draft article 32 on the immunity of warships on the high seas became Article 8 of the High Seas Convention.[302]

Draft article 49 on the right to fish became Article 1 of the Fisheries Convention with the right being made further subject to the interests and rights of coastal states.[303] The "interests and rights of coastal States" was elaborated upon in Article 6, which indicated that a coastal state has a "special interest" in maintenance of productivity of living resources of any area of the high seas adjacent to its territorial sea.[304] Article 7 made it clear that coastal state actions regarding high seas fishing must be based on the urgent need for conservation measures, which shall be based on scientific findings, and not discriminatory against foreign fishermen.[305] Essentially then the Fisheries Convention, by adding the coastal state provision, did not depart from the general principle of the freedom of all nations to fish on the high seas subject to conservation regulations.

The Latin American states ruling the extended territorial sea claims have recognized as general principles,

the freedom of navigation and overflight by ships and aircraft of any flag.[306]

C. Sovereignty of the Airspace over the Territorial Sea and the Bed and Subsoil of the Territorial Sea

1. International Conventions

Article 2 of the Territorial Sea Convention states that a coastal state's sovereignty extends to the airspace over the territorial sea as well as to the bed and subsoil.[307]

2. International Custom

The Convention for the Regulation of Aerial Navigation of 1919[308] recognized that "every Power has complete and exclusive sovereignty over the air space above its territory," which territory includes the territorial waters.[309] While discussing the international law restrictions on the use of the word "sovereignty", Jessup did state that a state is believed to be sovereign "over the territorial sea and over the air space."[310]

Articles drawn up and adopted by the First Sub-committee of the Second Committee of the 1930 Hague Conference included Article 2, stating that, "The territory of a Coastal State includes also the air space above the territorial sea, as well as the bed of the sea, and the subsoil."[311] Observations of the Sub-Committee included:

> "It therefore follows that the Coastal State may also exercise sovereignty in the air space above the territorial sea, and over the bed of the sea and the subsoil. It is important to emphasize that in these domains also sovereignty is limited by the rules of international law. As regards the territorial sea including the air and bed of the sea as used in maritime navigation, these limitations are, in the first place, to be found in the present convention. So far as concerns the air space the matter is governed by the provisions of other conventions; as regards the bed of the seas and the subsoil, there are but few rules of international law."[312]

The International Law Commission adopted the proposed Article 2, above, except for purely stylistic changes, but the Commission did not study the conditions under which coastal states could exercise their sovereignty.[313] As noted in the International Convention section, above, the Article was included in the Territorial Sea Convention.

It appears that the Convention codified existing law. Lauterpucht had written prior to the Convention that,

> "The practice of States seems to accord with the theory of the sovereignty of the subjacent State in the air space over its territory and waters, both national and territorial, unmitigated by any servitude or other right of innocent passage."[314]

The Restatement of the Foreign Relations of the United States includes the bed of the territorial sea, the subsoil under and the air space over the territorial sea in the territory of a state.[315]

Jessup states that littoral sovereigns have claimed the sea beds from time immemorial as their exclusive property.[316] Lauterpacht writes, "As the part of the sea which forms the maritime belt is the property of the littoral State, the surface and subsoil of the sea bed under the maritime belt is also the property of the littoral State and cannot be appropriated by any "other State."[317] Colombos states that it is generally admitted that the bed of the waters and subsoil beneath the territorial waters "...belong, to an unlimited extent, to the State which is sovereign of the territory on the surface."[318]

It is readily apparent from the foregoing that customary international law recognizes that the coastal state is sovereign with respect to the sea bed under the territorial sea, the sub-soil of the sea bed, and the air space covering the territorial sea.

D. Innocent Passage

The concept of innocent passage of foreign ships in the territorial sea, particularly of warships, is very complicated,[319] but the purposes of this thesis do not require such in depth analysis as would be required to deal with such a topic. Regarding the warship portion of Brazil's Decree-law, it simply indicates that regulations will be forthcoming. Such regulations apparently have not

been issued as of this writing. Accordingly the Martin issue will be covered only to the extent that the Incre- Law claims the general authority to regulate passage for reasons of security.

1. International Conventions

The Territorial Sea Convention articles dealing most generally with the right of innocent passage are Articles 14 through 23.[320] Article 14 states in part:

> "1. Subject to the provisions of these Articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.
>
> ...
>
> 3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary for force majeure of by distress.
>
> 4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the Coastal State. Such passage shall take place in conformity with these Articles and with other rules of international law.
>
> ...
>
> 6. Submarines are required to navigate on the surface and to show their flag."[321]

Article 16 states that the coastal state may prevent passage which is not innocent as well as temporarily suspend, in a non-discriminatory manner, innocent passage of foreign ships if essential for the protection of its

security. Passage through international straits was specifically excluded from this provision.[322]

Article 17 indicates the duty of foreign ships exercising the right of innocent passage to comply with the laws and regulations of the coastal state in conformity with the articles of the Convention and particularly relating to transport and navigation.[323]

Article 23, which pertains to the passage of warships, provides that if a warship doesn't comply with coastal state regulations concerning passage or disregards its request for compliance, the coastal state may require the warship to leave the territorial sea.[324]

It may be recalled that the Decree-law required that all ships comply with her regulations to prevent pollution of the waters and harm to the resources.[324] As noted previously Brazil also issued regulations regarding use of territorial waters, etc., by nuclear powered ships. Conventional law relevant to these provisions are Articles 24 and 25 of the High Seas Convention. Article 24 requires that every state make "...regulations to prevent pollution of the seas by the discharge of oil from ships..."[326] Article 25 requires that every state take" ..measures to prevent pollution of the seas from the dumping of radioactive wastes,..." considering standards and regulations which competent international organizations may have

formulated.[327] The International Convention for the Safety of Life at Sea, 1960, set certain standards and regulations applicable to nuclear ships in its chapter 8.[328] "Ships of war" were specifically excluded from application of the chapter.[329]

2. International Custom

Jessup wrote in 1927 that the right of innocent passage, as a general principle, was firmly established in international law.[330] He did, however, indicate that opinions differed on whether war vessels may exercise the right and the extent to which transient vessels are subjected to the authority of the littoral state.[331] Jessup stated that the sound rule was that warships should not enjoy an absolute right to pass through territorial waters because warships threaten.[332] After citing the views of several other publicists, Jessup concludes that while normally passage of warships is not prohibited, legally it may be forbidden at any time.[333] Jessup believed that it was clear that even transient vessels must obey "reasonable rules and regulations laid down by the littoral state in the interests of safety of navigation and maritime police."[334] A flag state can protest only when the rules and regulations amount to unreasonable interference with navigation.[335]

The Second Committee of the 1930 Hague Conference reported that the right of innocent passage has been recognized because of the great importance to all states of freedom of navigation.[336] The commentary to the proposed Article 3 stated that, "For a passage to be deemed other than innocent, the territorial sea must be used for the purpose of doing some act prejudicial to the security, to the public policy or to the fiscal interests of the State."[337]

While Article 4 states that the coastal state is not allowed to put obstacles in the way of innocent passage as well as requires that submarines navigate on the surface,[338] Article 5 indicates that the right of passage does not prevent the coastal state from taking all necessary steps to protect itself in the territorial waters against acts prejudicial to the "security, public policy or fiscal interests of the State,..."[339] Committee observations indicate that Article 5 was intended to give the coastal state the right to verify the innocent character of the passage and take necessary steps to protect itself. The coastal state was bound to use great discretion, however, so as to avoid unnecessary hindrances to navigation.[340] Committee observations to Article 6 stated that:

> "International law has long recognized the right of the Coastal State to enact in the general interest of navigation, special

regulations applicable to vessels exercising the right of passage through the territorial sea. The principal "powers which international law has hitherto recognized as belonging to the Coastal State for this purpose are defined in this Article."[341]

The Article listed the following principal powers:

"(a) the safety of traffic and the protection of channels and buoys;
(b) the protection of the waters of the Coastal State against pollution of any kind caused by vessels;
(c) the protection of the products of the territorial sea;
(d) the rights of fishing, shooting and analogous rights belonging to the Coastal State."[342]

Regarding the passage of warships, Article 12 provided that as a general rule the coastal state would not forbid passage or require prior authorization or notification, but the coastal state had the right to regulate the conditions of passage. The standard provision that submarines shall navigate on the surface was also included.[343] Committee observations stated that Article 12 recognized the existing practice which, "...without laying down any strict and absolute rule," leaves that coastal state power, in exceptional cases, to prohibit passage.[344] The proposed Article 13 regarding coastal state action in the event of warship non-compliance,[345] was the same as Article 23 of the Territorial Sea Convention cited previously.

The International Law Commission reiterated the principle of international law recognized by the 1930 Hague

Conference, that ships of all states have the right of innocent passage.[346] Draft article 17 set forth the rights of protection of the coastal state[347] which was adopted in substance by Article 16 of the Territorial Sea Convention. Draft article 18 became Article 17 of the Convention. The Commission's commentary stated that:

> "International law has long recognized the right of the coastal State to enact, in the general interest of navigation, special regulations applicable to ships exercising the right of passage through the territorial sea."[348]

The Commission further listed the four regulatory power areas for the coastal state which were included in the proposed Article 6 of the Hague Conference,[349] plus a fifth category of "Any hydrographic survey."[350]

Lauterpacht has written that the littoral state may exercise exclusive powers of police and control within its maritime belt "in the interest of its customs duties, the secrecy of its coast fortifications, and the like."[351] He further states that,

> "...it is the common conviction that every State has by customary International law the right to demand that in time of peace its merchantmen may inoffensively pass through the territorial maritime belt of every other State."[352]

This right, Lauterpacht states, is a consequence of the freedom of the open sea.[353]

Regarding passage of warships, Lauterpacht writes that their right to pass unhindered is not generally recognized.

He notes, however, that a usage has grown by which passage, if inoffensive and without danger, shall not be denied during peace; and that warship passage through straits within the maritime belt cannot be denied. The latter right is considered to be customary international law.[354]

On matters of police and control Lauterpacht states that the exclusive jurisdiction of the littoral state is universally recognized.[355]

The Restatement states that passage is innocent so long as it is not prejudicial to the "peace, good order and security" of the coastal state and made in conformity to Articles 14-17 of the Territorial Sea Convention.[356] The Restatement position on warships is that the right of innocent passage is not dependent on the consent of the coastal state.[357]

Colombos writes that within territorial waters foreign powers may claim certain rights for their vessels and subjects, the chief of which is innocent passage.[358] Although Colombos does regard the right of innocent passage as being completely established in international law,[359] he qualifies the right to the extent that he states that there is "no doubt that a State can impose the observance of its laws of police and security in the whole area of its marginal belt on ships remaining there."[360]

Regarding warships Colombos writes that a state may

forbid or limit access to its territorial waters based on the right of security and self-defence.[361]

E. Regulation of Fishing Within the Territorial Sea

1. International Convention.

The major convention provisions regarding the coastal state's rights with respect to fishing within the territorial sea are Articles 1 and 2 of the Territorial Sea Convention, which refer to the sovereignty of a coastal state over its territorial sea as well as its bed.[362] In addition, Article 14(5) provides that

> "...passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish to prevent these vessels from fishing in the territorial sea."[363]

2. International Custom.

Whether labeled as customary international law or a general principle of law, it is clear that the coastal state has the right to reserve fishing in the territorial sea for the exclusive use of its nationals. The proposed Article 6 of the Hague Conference[364] and the International Law Commission commentary to draft article 18[365] support this conclusion as do the Restatement[366] and the writings of Lauterpacht,[367] Bishop[368] and Colombos,[369] to mention but a representative few of the publicists. The United States Supreme Court held in the case of Manchester v.

Massachusetts, that the territorial jurisdiction

> "...includes the right of control over fisheries, whether the fish be migratory, free-swimming fish or free-moving fish, or fish attached to or embedded in the soil."370

F. Regulation of Research and Exploration in the Territorial Sea

1. International Convention.

The Territorial Sea Convention does not specifically provide for the rights of coastal states to regulate research and exploration activities within the territorial sea. This right does, however, appear clearly within the scope of Article 1 sovereignty, especially considering the Convention provisions of coastal state rights such as sovereignty over the bed and subsoil of the territorial sea,[371] the right or duty to prevent pollution,[372] the right to limit fishing exclusively to nationals of the coastal state,[373] references to the rights of the coastal state with respect to its safety and security,[374] and the fact that the innocent passage right includes stopping or anchoring only incidental to navigation, necessity by force majeure or by distress.[375] The Continental Shelf Convention further provided that the coastal state has sovereign rights over the continental shelf outside the territorial sea for the purpose of exploring it.[376]

2. International Custom.

It is the writer's belief that the Convention provisions

cited above are evidence of the customary international law rule that the coastal state may regulate research and exploration activities within the territorial sea. Most publicists writing on coastal state powers regarding research and exploration activities have dealt with areas such as the continental shelf beyond the territorial sea limits. Jessup's view of the coastal state's regulatory rights within the territorial sea are as follows:

> "It is hard to imagine any restriction on the use of the territorial waters, short of the denial of the right of innocent passage in time of peace, or the denial of refuge in distress, which would be attacked as ultra vires unless it would be equally indefensible if applied to the land."377

The 1966 Report of the Panel on Oceanography of the President's Science Advisory Committee, entitled "Effective Use of the Sea" stated the following:

> "...the territorial sea and internal waters of various nations with limits varying from nation to nation and measured by variously determined baselines, are wholly removed from investigation of any kind without prior consent of the nation within whose territory the waters are located."378

Professor W. T. Burke agrees with the Panel's report and writes:

> "Coastal states exercise sovereign authority over the territorial sea subject to the right of innocent passage for foreign vessels and it is generally understood that all scientific research in this region requires the consent of the coastal state, unless such research can be undertaken in a way compatible with innocent passage."379

CHAPTER V

APPRAISAL OF THE BRAZILIAN TERRITORIAL SEA CLAIMS UNDER PUBLIC INTERNATIONAL LAW

A. Delimitation of the Boundary Between Internal Waters and the Territorial Sea

Brazil's use of the low-water line as the normal baseline[380] is clearly in accord with the Territorial Sea Convention[381] and customary international law.[382] Regarding the portion of Brazil's claim to the right to use the straight baseline method where the "coast line has deep indentations or projections, or where a chain of islands exists along the coast and in the immediate vicinity,"[383] perusal of Brazil Chart No. 13,001, indicates that the only straight baselines utilized were in the mouth of the Amazon River. (See Appendix A) While the chart does not include the baseline and no charts were available which included them, the outer limit of the territorial sea has an indentation similar to the mouth of the Amazon with straight lines connecting the outer limits of the outer islands within the mouth. The outer limit of the territorial sea makes it clear that no single line was drawn across the mouth and no long single lines were drawn. Accordingly there appears to be no doubt that the baseline follows the general direction of the coast and there is no problem with

the legality of the baselines employed by Brazil.[384] Perhaps this is not surprising since a territorial sea as large as 200 miles undoubtedly reduces the temptation to expand national territory by the straight baseline method.

B. Sovereignty of the Air Space, Bed and Subsoil of the Territorial Sea

As seen previously Brazil claims the air space, sea bed and subsoil corresponding to the limits of their territorial sea claim.[385] Since regulations either have not been issued or are not available at this time, appraisal will be limited to the claims to sovereignty over the areas.

The text on international law limitations previously noted that the coastal state's sovereignty extends to the airspace, bed and subsoil under Article 2 of the Territorial Sea Convention,[386] and that the Convention provision was considered to codify existing customary law of long-standing. It, therefore, appears that Brazil's claims to air space, bed and subsoil are valid if the basic territorial sea claim is valid.

C. Innocent Passage

Article 3 recognizes the right of innocent passage for ships of all nationalities in the Brazilian territorial sea.[387] This provision states the same general right as

does Article 14 (1) of the Territorial Sea Convention,[388] and is in accord with the views of the state of the law of Jessup, Lauterpacht, and Colombos, as well as the 1930 Hague Conference and the International Law Commission cited previously.[389]

The Brazilian definition of innocent passage as simple traversing exercising only navigation activities and stopping only incidental to navigation[390] is essentially the same as that contained in Article 14 (2) and (3) of the Territorial Sea Convention.[391]

Article 3, paragraph 2 of the Decree-Law, requires that all ships in the territorial sea comply with Brazilian regulations designed to guarantee peace, order, and security as well as prevent water pollution and harm to sea resources.[392] To partially accomplish prevention of pollution the regulations regarding nuclear powered ships were issued.[393] Article 14 (4) of the Territorial Sea Convention makes the same provision with respect to the peace, good order and security of the coastal state.[394] It appears that Article 14 (4) reflects customary international law. Its provisions are essentially the same as recognized by the Hague Conference[395] and the Restatement.[396] Colombos referred to the undoubted right of a coastal state to impose observance of its police and security laws on ships in the marginal belt.[397] Lauterpacht's statement was that exclusive police and control powers could be

exercised by the littoral state "in the interest of its custom duties, the secrecy of its coast fortifications, and the like."[398] Jessup was in accord insofar as the rules did not unreasonably interfere with navigation.[399] Accordingly, Brazil's claim of the right to require compliance with her regulations regarding peace, order and security clearly appears to be in accord with international law.

On the matter of requiring compliance with pollution regulations, the proposed Article 6 of the Hague Conference,[400] and the International Law Commission commentary regarding draft article 18[401] (Article 17, Territorial Sea Convention) both stated that protection of coastal state waters against pollution of any kind caused by vessels and protection of products/living resources of the territorial sea, were rights of coastal states long recognized in international law.[402] With regard to state practice in controlling pollution by vessels transiting the territorial seas, it is noted that the United States prohibits the discharge of oil by all boats and vessels.[403]

In view of the general sovereign rights of the coastal state within the territorial sea as well as the more specific rights referred to above, it is apparent that Brazil had the right to require compliance with reasonable pollution and conservation of resources regulations.

The specific pollution regulation regarding nuclear powered vessels required a guarantee that the vessel would not dispose of radio-active wastes within the territorial sea.[404] That such regulation is reasonable is apparent from Article 25 of the High Seas Convention which provides that each state must take measures to prevent pollution of the seas by dumping of radio-active waste.[405] Although Article 25 is intended to apply to the flag state controlling activities of its vessels on the high seas,[406] it should be clear that such dumping is a matter of great concern and that a coastal state has a legitimate interest in ensuring that it does not take place in its territorial sea. The agreement between the United States and Denmark concerning visits of N.S. Savannah contained the provision that the United States was to ensure that no disposal of radio-active wastes took place within the territorial waters of Denmark.[407] It appears that the Brazilian restraint on disposal of radio-active wastes within the territorial sea was in clear accord with international law, once again, if the territorial sea claim is valid.

The requirement that visiting nuclear powered ships obtain clearance to enter the territorial sea[408] with specified safety criteria as prerequisites for approval,[409] is probably based upon concern for the safety of other vessels, persons and resources which might be harmed if

there was a casualty to such a vessel. These concerns were recognized and provided for in the Convention for the Protection of Human Life at Sea of 1960,[410] and in the agreement with Denmark preceding the visit of N.S. Savannah, cited above. Inasmuch as the criteria do not relate to warships and are essentially in accord with the internationally agreed upon criteria contained in the 1960 convention, the regulation itself is not contrary to international law.

The only provision of the Decree-Law pertaining to warships indicated that regulations would be issued that were deemed necessary for reasons of security.[411] The specific regulations that Brazil will issue are unknown at this time but, inasmuch as her 1934 warship regulations[412] and World War II neutrality regulations[413] required that submarines navigate on the surface within territorial waters, this requirement will probably be carried over. If so their entitlement to do so is clearly established in international law.[414]

On the right to regulate passage of warships in the territorial sea, the Restatement view is that the right of innocent passage of warships does not depend upon the coastal state's consent.[415] This view appears to be the minority view. It was argued by several governments before the International Law Commission, but rejected.[416] The

Commission stated:

> "While it is true that a large number of States do not require previous authorization or notification, the Commission can only welcome this attitude, which displays a laudable respect for the principle of freedom of communication, but this does not mean that a State would not be entitled to require such notification or authorization if it deemed it necessary to take this precautionary measure. Since it admits that the passage of warships through the territorial sea of another State can be considered by that State as a threat to its security, and is aware that a number of States do require previous notification or authorization, the Commission is not in a position to dispute the right of States to take such measures."[417]

The draft article 24 of the Commission provided that the coastal state could make such passage subject to previous authorization but normally it should be granted subject to the coastal state rights set forth in draft article 17 and the foreign ships duties of draft article 18.[418] Draft article 24 was not included in the Territorial Sea Convention, but Article 23 of the Convention provides that the warships may be required to leave the territorial sea if the warship does not comply with coastal state regulations concerning passage,[419] thus clearly indicating the propriety of issuing regulations. Articles 14 (4) [420] and 16[421] also reflect the legitimate security interests of the coastal states vis-a-vis the right of innocent passage. Proposed Article 5 of the Hague Conference stated that, "The right of passage does not prevent the Coastal State from taking

all necessary steps to protect itself in the territorial sea against any act prejudicial to the security...."[422]

The reason for the recognition of the right of coastal states to regulate passage of warships is perhaps correctly stated by Jessup to be the fact that the presence of warships in the territorial sea threatens.[423] Jessup,[424] Lauterpacht[425] and Colombos[426] appear to be in agreement that coastal states possess the right to regulate for reasons of security or self-defense.

Based on the foregoing Brazil's bare claim to the right to regulate passage of warships in the territorial sea cannot be considered contrary to international law.

D. Regulation of Fishing Within the Territorial Sea

As noted previously Brazil claims the right to regulate fishing within her claimed territorial sea[427] and has in fact issued such regulations providing in part for an extensive zone in which only Brazilian nationals are allowed to fish.[428]

The exclusive rights of coastal states to fish within the territorial sea are clearly in accord with international law,[429] therefore Brazil's fishing claims and regulations are valid if its territorial sea claim is valid.

E. Regulation of Research and Exploration Within the Territorial Sea

Article 4 of the Decree-Law provides that Brazil will regulate research and exploration activities within the territorial sea[430] but apparently such regulations have not been issued as yet.

Sources cited earlier in the text of the International Law Limitations Chapter make it quite clear that the coastal state has regulatory power over research and exploration activities conducted within the territorial sea, with the possible exception cited by Professor Burke, of research which can be undertaken compatible with innocent passage.[431] As such Brazil's general provision is not contrary to international law.

F. Delimitation of the Breadth of the Territorial Sea

As is readily apparent from analysis of most of the Brazilian claims to authority within her claimed territorial sea, the essential issue is whether the breadth claimed by Brazil is in accord with international law. If the breadth is permissible then other states will have little legal basis for complaint regarding the incidental claims.

There is no conventional law proscribing Brazil's claim. As seen previously there is no uniform practice of states with respect to the breadth, nor does a sense of moral oughtness attach to a particular breadth. Therefore,

in the absence of conventional or customary international law, resort will be made to the general principles of law.

For the purpose of analysis consider that the oceans consist of territorial seas and the high seas. If either sea is expanded the remaining sea must necessarily contract. Therefore, when a state such as Brazil, with her 3,692 mile coastline[432] increased her territorial sea claim from 3 miles to 12 miles in 1969, and further to 200 miles in 1970, she reduced the high seas significantly. Necessarily this means that with the rights Brazil assumes in the area of claim there is an equal area in which the rights which all nations once had on the high seas no longer exist. Exercise of the activities by all nations which once were a matter of right have now become subject to the consent of Brazil.

1. Brazil's Interests in a 200 Mile Territorial Sea

Each coastal state is entitled to a belt of sea around its coast which is considered essential for protection of the state's legitimate interests.[433] The delimitation of the breadth of this belt is necessarily a unilateral act inasmuch as the coastal state is the only body competent to make the claim.[434] Since Brazil has delimited her territorial sea 200 miles from her baselines it is appropriate to consider Brazil's interests which caused her to make such

a claim.

a. Brazil's fishing interests

Fishing is essentially the "special interest" which Brazil as a coastal state has in maintaining the productivity of the living resources of the sea adjacent to her coasts.[435] It may be useful to recall at this juncture that the decision in the Fisheries Case regarding the Norwegian fisheries zone spoke of rights founded on vital needs of the population as attested to by very ancient and peaceful usuage.[436]

In 1953 Brazil caught approximately 161,000 tons of fish while Chile caught about 107,000 tons and Peru's catch was about 165,000 tons.[437] By 1968 Brazil caught 328,000 tons,[438] while Chile and Peru caught 1,376,000 and 10,520,000 tons respectively.[439] Thus these Latin American neighbors of Brazil who claimed fishing rights out to 200 miles had increased their fish production substantially more than Brazil. In 1969 Brazil's fish catch was estimated at about 400,000 tons[440] and in 1970 it was around 500,000 tons.[441] The present catch results in Brazilians consuming about 10 pounds of fish per year on the average.[442]

The size of the catch and the limited fish diet in the country has been a matter of concern to the government, especially since the waters off the coasts apparently contain an abundant supply of fish. A 1961 estimate indicated

that fishing grounds off Brazil could produce over 3 million tons per year.[443] Brazil's goal for 1972 is 2 million tons.[444] This goal is projected to increase fish consumption on an annual per capita basis to 44 pounds,[445] and to create some 200,000 new jobs for men and women.[446] In order to achieve this goal Brazil granted a series of incentives such as tax concessions and special credits for private entrepreneurs to enter the fishing business.[447] From 1969 until March 1971, 134 companies had become eligible for the incentives.[448] In that period the fishing fleet was modernized and doubled in size. In March there were some 300 additional fishing craft being built in Brazil's shipyards.[449]

From the foregoing it is apparent that Brazil's fishing interests lie not in conserving that which they have possessed for a long period of time but rather in expanding their interests into a 200 mile territorial sea which they now reserve exclusively for their nationals or in which they claim the right to make such reservation. This expansion intent was further indicated by the studies conducted prior to deciding upon 200 miles. These studies indicated that expansion to a 100 mile limit would satisfy her fishing interests.[450]

b. Brazil's natural resource interests other than fish

It may be well to recall for a moment the Continental Shelf Convention provisions stating that a coastal state exercises sovereign rights over the natural resources of the continental shelf and that such rights do not depend upon occupation or other activities with respect to the shelf.[451] The shelf referred to an area adjacent to the coast but outside the territorial sea to a depth of 200 meters or more where the water depth admitted to exploitation of the natural resources of the bed and subsoil.[452] The International Court of Justice went beyond the Convention as a basis of coastal state rights and stated that,

> "...the right of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso facto and ab initio, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right."[453]

Neither the Convention nor the Continental Shelf case was very precise as to the outer limit of the continental shelf which is subject to the coastal state's sovereignty.

Oil is probably the most important resource in the continental margin[454] in the present and foreseeable future. The continental margin contains most of the known

off-shore petroleum and gas reserves.[455] Roughly one half of the continental margin lies within the 200 meter depth.[456] Potential United States continental margin resources of petroleum in depths of 200 to 2,500 meters are estimated as 640 billion barrels of oil, 50 billion barrels of natural gas liquid, and 1,590 trillion cubic feet of natural gas. From 2,500 meters to depths up to 5,000 meters, oil resources are estimated at 227 billion barrels, natural gas liquid at 18 billion barrels, and natural gas at 867 trillion cubic feet.[457] The resources potential of the Brazilian continental margin would probably not be as high inasmuch as it has a shorter total coastline, but the potential is still significant. Brazil is concerned about its oil supply inasmuch as their known oil reserves will only last another ten years. Hopeful expectations of Brazilian geologists that their known off-shore oil reserves will reach a billion barrels would extend Brazil's supply for 20 years.[458] Because of the limited known oil reserves Brazil is spending substantial amounts of money prospecting for new wells inland and off-shore.[459] Oil did play a large role in arriving at a 200 mile limit because Brazilian investigations of the shelf in the Rio De Janeiro area revealed the existence of oil about 150 miles out, but the site was not very precisely located so the 200 mile limit gained support from the oil interests.[460]

The extended territorial sea claim of Brazil was also

apparently motivated in part by fear that technologically advanced nations would be able to extract resources, including the oil, in depths beyond the limits of her territorial sea and at depths below 200 meters. At least this appeared to be the fear expressed by Mr. Magalhaes Pinto, Brazil's Minister For Foreign Affairs, in August 1968, in a speech in which he emphasized the need for precise delimitation of national sovereignty under the water.[461] Dr. Pardo, the Permanent Representative of Malta to the United Nations phrased these fears as follows:

> "...[the] present [existing] almost total freedom of the seas beyond national jurisdiction offers clear immediate advantages only to technologically advanced maritime States that are able effectively to use and to exploit ocean space for a variety of purposes: only comparatively rich and advanced countries can find the large sums required competitively to enter overseas fishing: only rich and technologically advanced countries can engage in the exploitation of the seabed beyond the geological shelf. Thus under present conditions it is natural that other states prefer to reserve the right to extend their national jurisdiction as circumstances may suggest in order to attempt to exclude from their general vicinity a competition for resources which their national (sic) cannot meet."[462]

The importance of the "immediate advantages" of the freedom of the seas, referred to by Dr. Pardo, as it related to Brazil in 1968, is indicated by the statement of Mr. Souza E. Silva in the Legal Working Group of the Ad Hoc Committee

to Study the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction. Mr. Silva stated:

> "Lastly, it was desirable that all countries should be ensured immediate benefit from the exploitation of the resources of the ocean floor, so that States would not be tempted to extend indefinitely the limits of their national jurisdiction."463

c. Brazil's security interests

The preamble to the Decree-Law speaks of the competence of all states to fix their territorial sea limits in accord with various factors including their security and defense. Brazil has stated that the extended limits are a result of weakness rather than aggressiveness or megalo maritime expansionism inasmuch as the larger limits increase the security and defense.[464] Additionally, when Brazil had a 12 mile territorial sea, she seized Russian boats carrying sophisticated electronic equipment which could have been used on an espionage mission. The boats were within the 12 mile limit when seized.[465]

d. Other Brazilian interests

It is natural that a claim of the proportion of Brazil's territorial sea claim involves an element of nationalism.[466] Undoubtedly, regionalism is also involved inasmuch as their claim supports those of most of the coastal South American states. The Montevideo and Lima Conference

indicate the solidarity of this group. Brazil confirmed the regional nature of the decree by referring to it as an act of continental solidarity.[467] The Ministry of the Navy stated:

> "We knew that all Latin-American countries which had extended their territorial sea claims were waiting for Brazil to take the measure, thereby reinforcing their own positions in defense of their maritime interests."[468]

2. World Community Interests Affected by Brazil's 200 Mile Territorial Sea

In order to assess the legality of Brazil's claim it is necessary to balance the rights of the world community which are adversely affected by such a claim. For if Brazil's interests in the sea area out to 200 miles outweigh world community interests in the area, then so must the interests of a substantial number if not all other coastal states similarly outweigh world interests.

Recall for a moment the freedoms of the high seas reflected in the High Seas Convention including the freedom of navigation, fishing, laying cables and pipelines, and overflight.[469] In the extension from 12 to 200 miles all states now have their fishing rights, which previously were subject only to non-discriminatory conservation regulations, entirely under the control of Brazil. As we have seen the control exercised by Brazil excludes the foreign fisherm

from the inner 100 miles and requires payment and compliance with certain other conditions in order to fish the outer 100 miles. At the time of enactment these waters were fished by the United States, France, Trinidad and Tobago, Nationalist China, Japan, Korea and the U.S.S.R.[470] These states were thus deprived of the use of these waters as were all states which may have ever desired to take advantage of their fishing rights on the high seas.

Freedom of navigation has been significantly limited in scope by the Brazilian claim. While the right of innocent passage remains, this right is much less substantial than Freedom of navigation on the high seas. Brazil now has the power, among other things, to prescribe and apply regulations relating to security, customs and health; protect against pollution from ships; and provide for the safety of navigation.[471] The pollution control right may be extremely significant for commercial navigation. Assume for instance the impact if a party desired his goods shipped from Caracas to Buenos Aires on board a vessel which complied with pollution control regulations of Venezuela and Argentina, but not with those of Brazil. The vessel would be forced to travel half way across the Atlantic Ocean to bypass the Brazilian territorial sea. This would create a substantial delay in delivery of the goods and significantly affect the cost of the goods to the Buenos

Aires consumer. Certainly problems such as this may be alleviated by international agreements but for the present Brazil has commercial shipping interests in a very vulnerable position. The pollution control possibility is but one facet of the problem. Of greater short-term importance, Brazil could suspend all passage within the territorial sea if she believed such was necessary for her security.[472] Of lesser importance commercial vessels transiting the territorial sea are subject to arrest and judgment with respect to claims against them arising within Brazilian waters.[473]

The high seas freedom of overflight has been severely restricted by the claimed territorial sea extension since there is not even a right of innocent passage with respect to aircraft. Overflight thus becomes subject to the consent of Brazil which is subject to suspension or termination for any reason deemed appropriate by Brazil. If this consent is withheld the tremendous difference in distance required to bypass the territorial sea rather than fly over the high seas existing prior to the Decree-Law is readily apparent.[474]

The freedom of research and exploration was not included in Article 2 of the High Seas Convention, but the International Law Commission labeled it as a general principle of law.[475] In view of the fact that Brazil's 200 mile

territorial sea probably has an outer limit beyond the continental margin,[476] all research/exploration activities on the seabed would have to be conducted, as a matter of right, at tremendous depths. Because of the technological difficulties and the resulting expense, such activity would probably be significantly impeded. The necessary alternative would involve obtaining Brazil's consent to research/exploration within her limits.

The military interests of the world community in the use of the high seas are significant. The two major world powers, the United States and the U.S.S.R., have substantial submarine forces, including nuclear submarines. An important military advantage of the submarine is its ability to avoid detection through submersion. This advantage becomes restricted when the territorial seas are expanded because of the requirement that submarines navigate on the surface in territorial waters. If a significant number of coastal states claimed 200 miles, the areas in which the submarines could operate unimpeded would be drastically diminished. This would facilitate location of submarines on the high seas through the use of sensing devices in key locations. The result would be either a loss in the military effectiveness of the submarine or a strong temptation to venture into the territorial seas submerged, thus risking an international incident if detected.[477]

In order for naval task forces to conduct underway exercises a large ocean area is required. Such areas would be limited by 200-mile territorial seas. Additionally the possibility of nuclear attack requires wide fleet dispersal in the simple transit of a task force. A modern task force should be dispersed over an area approximating the size of New York State.[478] A task force passing through Brazil's territorial sea would be unable to conduct flight operations without prior consent. Deployment time of a task force would be substantially longer with extended territorial seas. If, for example, Uruguay was undergoing an invasion and requested United States naval assistance, if Brazil denied permission for the naval force to transit her territorial sea, the delay involved in bypassing the sea, might well render such assistance to Uruguay too late.

Appendix B depicts the global effect in the event that all states should claim a 200 mile territorial sea. A brief perusal of the chart taking into consideration the power exercisable by coastal states within their territorial seas should indicate the turmoil and conflict which might and most probably would result if all nations followed Brazil's example. Undersecretary of the Navy John Warner apparently utilized Appendix B in attempting to demonstrate the inviability of the 200 mile concept to the Brazilian Foreign Ministers.[479] The Brazilian weekly magazine Veja reported:

> "In truth, if all the countries of the world resolved to extend their territorial seas to the new limit, there would occur confusion similar to a simultaneous revision of all the territorial frontiers. In the Mediterranean, for example, the sea would become practically closed to free navigation.
>
> Meanwhile, Brazil defends its position only on the national and continental level. The regional solution for Latin America with respect to territorial seas cannot and should not be considered universal, because of problems that would occur in certain seas, straits and places of peculiar geography explains the Ministry of Navy in its publication, 'The Question of the Brazilian Territorial Sea!' "480

Balancing Brazil's interests in a 200 mile territorial sea against the world community's interests in retaining the freedoms associated with the high seas, reveals Brazil's desire to dramatically expand its fishing interests for the economic and dietary betterment of its nationals; the acquisition of all of its continental margin for present and future resource acquisition, chiefly oil; and reasons relating to security. Nationalism and regionalism, although important, do not, in themselves, change the decisional process. No matter how admirable the goal of bettering the economy and diets of Brazilians, the acquisition of territory at the expense of the world community is impermissible. All nations presumably desire these goals for their people and certainly a number of the nations of the world community are poorer and possess fewer potential resources than Brazil. If this criteria were valid for acquisition of territory, then it might follow that the poorest coastal state in the

world might be justified in claiming half of the Pacific Ocean. Brazil is not interested in conserving fisheries so that the world may profit by such conservation, but rather that Brazil may profit and other states of the world will profit only to the extent that they can buy fish products from Brazil.

Regarding the seabed and subsoil resources international law had already recognized the exclusive interests of the coastal state on the continental shelf beyond the limits of the territorial sea to a depth of 200 meters or greater where exploitable.[481] While this definition is not precise as to the outer limit of the seabed subject to coastal state sovereignty, it could suffice until international agreement was reached. Research has not revealed any instances of foreign nationals attempting to exploit the sea bed/subsoil off Brazil's coast at a depth in excess of 200 meters, but if such was the case, Brazil might well have argued that successful exploitation by such foreign nationals met the exploitability test thereby extending the sovereign rights of Brazil out to such depth.[482]

The imprecision of the outward edge of the continental shelf subject to the coastal state's sovereign rights is reflected in several United Nations resolutions. Resolution 2574A(XXIV) recognized this failing of the Continental Shelf Convention, noted that technology was making the entire seabed and ocean-floor progressively accessible and exploitable,

and affirmed that the resources of this area should be utilized for the benefit of all mankind as the Assembly was convinced of the urgent necessity to preserve the area from "encroachment or appropriation by any State, inconsistent with the common interest of mankind."[483] Resolution 2574D(XXIV) became more specific in pointing out that the exploitation for the benefit of mankind as a whole should take into account the special interests and needs of developing countries, and that an international regime was essential to effect this purpose. The resolution declared that until the international regime was established,

> "(a) States and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the sea of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction;
> (b) No claim to any part of that area or its resources shall be recognized."[484]

Thus, prior to the Brazilian Territorial Sea Decree-Law, a United Nations resolution forbade exploitation beyond the limits of national jurisdiction and declared that no claim in such an area would be recognized. Inasmuch as most of the states of the world are members of the United Nations, and there is at least a requirement for members to give good faith consideration to such resolutions,[485] Brazil should have had little fear that other nations would venture into the area immediately beyond the existing limits of her jurisdiction.

There were earlier General Assembly resolutions proclaiming that exploration and use of the sea-bed, ocean floor and subsoil were reserved for the benefit of all mankind, in December 1967,[486] and December 1968.[487] Despite the language of Resolution 2574D prohibiting claims beyond the limits of existing national jurisdiction, and the positive statements in the three cited resolutions that the area was reserved for the benefit of all, giving special consideration to the interests and needs of the developing countries, Brazil extended her territorial sea claim to such an extent that mankind and particularly the developing countries are deprived of all resource wealth in the continental margin of Brazil.

The security interests of Brazil certainly do not require a 200 mile protective belt. Such a belt eliminates the possibility of surveillance of coastal defenses by warships as well as the show of force possibilities of foreign countries so long as the territorial sea is respected, but the 12 mile territorial sea would accomplish just about as much.[488] With satellites there is little doubt that surveillance could be accomplished without the use of warships. Insofar as the protection against attack afforded by a 200 mile territorial sea, the limit would afford insignificant protection in view of the speed and distance capabilities of modern weapon systems. A submarine would certainly enter the territorial waters

submerged, and with little likelihood of detection in such a large ocean area,[489] if aggressive acts were contemplated. Even if 200 miles would suffice to protect Brazil, a territorial sea of that breadth would not be necessary since every state has an inherent right of self-defense which permits her to exceed its territorial limits if necessary for such defense.[490]

Considering Brazil's interests in an expanded territorial sea it is clear that her interests, while important to her population, are not crucial. The needs are not attested to by ancient and peaceful usage, but rather are an extension of her usage to claim for herself exclusively that which was free for the use of the world community prior to the claim. Following further the holding in the Fisheries Case,[491] the Brazilian claim was not moderate or reasonable in the context of her needs and the inclusive interests of the world community in the freedom of the seas. Since Brazil's claim violates the principle of the freedom of the seas, it is contrary to international law and invalid. There is virtually no chance that the claim will become valid in the course of time through the acquiescence of states[492] inasmuch as the United States, the U.S.S.R., Japan and various European countries have consistently raised strong objections to such claims.[493] The United States considers the Brazilian claim to be

contrary to international law[494] and has advised her fishermen that they are not obligated according to international law, to buy licenses.[495]

CHAPTER VI

RECOMMENDATIONS

The invalidity of Brazil's territorial sea claim lies not only in the unreasonableness of the 200 mile limit, but also in her claim (and that propounded in the Declaration of Montevideo and the Declaration of Latin American States on the Law of the Sea) to the competence of coastal states to unilaterally determine the limits of the territorial sea.[496] Such a claim would be proper if conditioned upon the accord with international law as enunciated by the International Court of Justice,[497] but the conclusion that 200 miles is a reasonable limit at this time forbodes the possibility that claims extending to the middle of the oceans may be forthcoming. If such becomes the case and oceans are divided on the basis of equidistance, then Dr. Pardo concludes that 15 states (including Brazil) will own two-thirds of the ocean area. Three-quarters of the ocean space would be owned by 19 states.[498] Such would clearly be contrary to the interests of the majority of the states of the world community.

If Brazil does not relent in her claim she will undoubtedly receive continued and possibly accelerated opposition from the world community, especially inasmuch as

General Assembly Resolution 2574D[499] states that such a claim will not be recognized. There are undoubtedly many sanctions being considered by states to convince Brazil to withdraw her claim. Indeed the sensationalist[500] Rio De Janeiro newspaper A Noticia reported that the United States said that it would crash Brazilian waters and war would result. The mechanism reported by the newspaper would be that of an American fishing boat entering the 200 miles without paying the tax or asking permission. The boat would be located by patrol boats, apprehended and towed into port, after which the twenty-six aircraft carriers of the American Navy would appear to rescue it.[501] While the newspaper resorts to absurd speculation as to the United States' reaction to the claim, in the United States the Military Sales Act forbids sales, credits or guarantees under the act "to any country during a period of one year after such country seizes, or takes into custody, or fines an American fishing vessel for engaging in fishing more than twelve miles from the coast of that country."[502] Brazil has charged the United States with "intolerable economic pressure" in postponement of congressional approval of the International Coffee Agreement because of Brazil's claims to a 200 mile territorial sea.[503] The above are only a few of the possible United States sanctions against Brazil's claim. Possible world

sanction are unpredictable but very serious because of the strong national sentiments existing in the claimant state and in those states most significantly affected by the claim.

Unfortunately claims tend to become inflexible because of domestic pressures as sanctions are applied. Hopefully Brazil's position will not become so inflexible that she cannot alter her posture in the near future, perhaps at the 1973 United Nations Conference on the Law of the Sea. President Nixon's proposals for consideration at this conference include a 12 mile territorial sea, preferential fishing rights for coastal states beyond the limits of the territorial sea depending upon the needs of the state in question, coastal state sovereignty over the sea bed under the high seas to a depth of 200 meters, and an international regime beyond the 200 meter depth. The coastal state would be trustee for the international regime in the area beyond the 200 meter depth to the edge of the continental margin. In this trusteeship zone the coastal state would have administrative control, receive a share of the international revenues and could impose additional taxes.[504] This proposal reasonably serves Brazil's legitimate interests in fishing and sharing in the wealth of the continental margin which she does not have the present capability to exploit. As discussed previously, her security interests would be adequately served by a 12 mile

territorial seas.

Since the world-wide effect of all coastal states adopting territorial seas under the present Brazilian rationale would be chaotic, it follows that a reasonable world order system with respect to the oceans can only be achieved if Brazil and her territorial sea compatriots are willing to significantly contract their claims. Fortunately there are indications that Brazil is willing to and expects to negotiate her claim and that the claim to sovereignty was in effect made to enhance her bargaining position in the upcoming law of the sea conference.[505]

Brazil may contend that her 200 mile claim leaves great portions of the ocean free for the common use of mankind, but the fable of a group of monkeys on one end of a seesaw, cited by Professor McDougal is relevant: "A single monkey may be able to race to the other end and pluck grapes from vines of an overhanging tree, but if all the monkeys suddenly race, no monkey gets any grapes."[506]

FOOTNOTES

1 M. McDougal and W. Burke, The Public Order of the Oceans 1 (1962) (hereafter cited as Public Order of the Oceans.)

2 W. Gormley, The Unilateral Extension of Territorial Waters 43 U. Det. L.J. 695 (1965-66).

3 "A phrase derived from the civil law meaning, in justice and fairness; according to what is just and good; according to equity and conscience." Black's Law Dictionary 659 (4th Ed. Rev. 1968).

4 L. Sohn, Basic Documents of the United Nations 228 (2nd Ed. Rev. 1968).

5 Convention on the High Seas, Apr. 29, 1958 (1962) 13 U.S.T. 2312, T.I.A.S. 5200 (hereafter cited as High Seas Convention.)

6 Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958 (1964) 15 U.S.T. 1606, T.I.A.S. 5639. (hereafter cited as Territorial Sea Convention.)

7 Convention on Fishing and Conservation of the Living Resources of the High Seas, Apr. 29, 1958 (1966) 17 U.S.T. 138, T.I.A.S. 5969. (hereafter cited as Fisheries Convention.)

8 Convention on the Continental Shelf, Apr. 29, 1958 (1964) 15 U.S.T. 471, T.I.A.S. 5578. (hereafter cited as Continental Shelf Convention.)

9 1 Oppenheim, International Law 28 (8th Ed. Lauterpacht 1955). (hereafter cited as Oppenheim.)

10 Colombos, International Law of the Sea 7 (6th Ed. 1967). (hereafter cited as Colombos.)

11 Oppenheim, supra note 9, at 26.

12 W. Mallison, Jr., The Zionist-Israel Juridical Claims to Constitute "The Jewish People" Nationality Entity and to Confer Membership in it: Appraisal in Public International Law, 32 Geo. Wash. L. Rev. 1061 (1964).

13 The adoption of uniform laws governing navigation of vessels on the high seas was recognized to constitute customary international law despite the passage of only eight years in the case of The Scotia, 14 Wall. 170, 186-188 (U.S. 1871).

14 Oppenheim, supra note 9, at 27.

15 Id., at 17.

16 Id., at 18.

17 1 C. Hyde, International Law, Chiefly as Interpreted and Applied by the United States 5 (2nd Ed. Rev. 1945). (hereafter cited as Hyde.)

18 Id., at 9.

19 Restatement Second, Foreign Relations Law of the United States 19 (1965). (hereafter cited as Restatement.)

20 See note 2, Oppenheim, supra note 9, at 29.

21 Gutteridge, Comparative Law 65 (1946).

22 Fisheries Case (United Kingdom v. Norway),(1951). I.C.J. 116, 132,133. (hereafter cited as Fisheries Case.)

23 North Sea Continental Shelf Cases, 8 Int'l Legal Mat. 340, 378-384 (1969). (hereafter cited as Continental Shelf Case.)

24 Oppenheim, supra note 9, at 31, 32.

25 Id., at 33. The United States Supreme Court stated in Hilton v. Guyot, 159 U.S. 113, 163,164,214,215 (1895), that the works of jurists and commentators were resorted to by judicial tribunals, "...not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."

26 4 Encyclopedia Americana, Int'l Ed. 449 (1963).

27 Circular No. 43 of the Ministry of Foreign Affairs to the Ministers of the Navy and of War and to the State Governors Regarding the Extent of the Territorial Waters, 25 Aug. 1914. Laws and Regulations on the Regime of the Territorial Sea 2, U.N. Legislative Series ST/LEG/SER.B/6 (U.N. Pub. Sale No. 1957 V2.) (hereafter cited as Laws and Regulations on the Regime of the Territorial Seas.)

28 Art. 17, Decree No. 11037, General Rules of Neutrality, 4 Aug. 1914, Laws and Regulations on the Regime of the Territorial Seas, supra note 27, at 670.

29 24 Am. J. Int'l L. (Supp.) 257 (1930).

30 Art. 7, Regulations Governing Visits by Foreign Warships to Brazilian Ports and Territorial Waters in Time of Peace, Annexed to Decree No. 24063 of 29 March 1934, 1 Laws and Regulations on the Regime of the High Seas 365, U.N. Legislative Series ST/LEG/SER.B, Jan. 1951. (hereafter cited as Laws and Regulations on the Regime of the High Seas.)

31 Art. 12, ibid.

32 Art. 12 (3), ibid.

33 Art. 3, Circular Annexed to Legislative Decree No. 1561 of 2 September 1939, as amended. Laws and Regulations on the Regime of the Territorial Seas, supra note 27, at 621.

34 Art. 13, id., at 623.

35 Art. 17, Regulations Concerning Port Officers, Annexed to Decree No. 5696 of 11 June 1940. Laws and Regulations on the Regime of the Territorial Seas, supra note 27, at 79.

36 Art. 129, id., at 80.

37 Para. 4, Note Verbale Du Ministere Des Affaires Estrangeres A La Legation De Norvege A Rio De Janeiro, En Date Du 4 Mai 1950. Laws and Regulations on the Regime of the Territorial Seas, supra note 27, at 2.

38 Decree No. 28, 840 integrating into national territory the adjoing part of the continental shelf, 8 Nov. 1950. 89 Diario Oficial No. 264, at 16,617 (18 Nov. 1950). Laws and Regulations on the Regime of the High Seas, supra note 30, at 299, 300.

39 Id., at 299.

40 Id., at 300.

41 See Cosford, "The Continental Shelf and the Abu Dhabi Award", 1 McGill L.J. (1952-1955) 124 (Article published in 1953). The cited portion of the Article is quoted in 4 Whiteman, Digest of International Law 804 (1965) (hereafter cited as Whiteman).

42 4 Whiteman, supra note 41, at 1090.

43 Id., at 1093.

44 U.N. Doc. A/Conf. 19/C. 1/L.10., Second United Nations Conference on the Law of the Sea, Official Records 169, U.N. Doc. A/Conf. 19/8 (1960). (hereafter cited as Official Records, 1960).

45 U.N. Doc. A/Conf. 19/L.12., Official Records, 1960, supra note 44, at 173.

46 Ibid.

47 Ibid.

48 Official Records, 1960, supra note 44, at 29, 30.

49 Official Records, supra note 44, at 30.

50 Ibid.

51 U.S. Department of State, Office of the Geographer, National Claims to the Territorial Sea 1 (Feb. 17, 1971), (hereafter cited as Geographer 1971).

52 Art. 7, Political Constitution, 7 Sept. 1950, Laws and Regulations on the Regime of the High Seas, supra note 30, at 300.

53 Geographer 1971, supra note 51, at 2.

54 Id., at 4.

55 Art. 1, Law No. 17.094 Dec. 29, 1966. 6 Int'l Legal Mat. 663 (1967).

56 Id., at 664.

57 Vol. B-1, Worldmark International Documentation Sea-bed 1968, 267 (1970).

58 Ibid.

59 Vol. D, Worldwark International Documentation Seabed 1968, at 243 (1970).

60 Ibid.

61 Ibid.

62 1 Lawyer of the Americas 105 (June 1969).

63 Decree-Law 553 of April 25, 1969 Altering the Delimitation of the Territorial Sea of Brazil. 8 Int'l Legal Mat. 939 (1969).

64 Art. 1 Decree 235 of May 16, 1969 Extending Territorial Waters. 8 Int'l Legal Mat. 1071 (1969).

65 Id., at 1067.

66 Ibid.

67 Id., at 1068.

68 Ibid.

69 Presidential Decree of 13 Dec. 1969.

70 Brazilian Territorial Sea Decree-Law of March 26, 1970, Department of State, Division of Language Services translation, doc. LS No. 15777 R-XX/R-XVII.) (hereafter cited as Brazilian Territorial Sea Decree-Law).

71 Id., at 1.

72 4 Whiteman, supra note 41, at 72.

73 Id., at 69. Brazil apparently voted in favor of the Resolution. 34 Dept. State Bull. 297 (Jan-June 1956).

74 Laws and Regulations on the Regime of the High Seas, supra note 30, at 299.

75 Brazilian Territorial Sea Decree-Law, supra note 70, at 1.

76 Ibid.

77 1. Oceano Atlantico (Parte Sul), Carta De Plotagem Estrategica No. 13001 (La Ellicao 30 de maio de 1970).

78 See Chart supra note 77. Appendix A is a portion of the chart but it does not include the African coast.

79 Brazilian Territorial Sea Decree-Law, supra note 70, at 1.

80 Id., at 2.

81 Id., at 1.

82 Id., at 2.

83 Ibid.

84 Ministry of Mines and Energy Resolution CNEN-4-71, Diario Oficial, 18 Feb. 1971. (hereafter cited as CNEN-4-71).

85 Law No. 4, 118 of 27 August 1962.

86 Art. 5, CNEN-4-71, supra note 84, at 2.

87 Art. 6, CNEN-4-71, supra note 84, at 2,3, states, "The criteria established in these norms for authorization of clearance apply exclusively to nuclear ships which have already terminated their trial voyage and possess the required Safety Certificate for a Nuclear Ship given by the respective country of registry, in accordance with Chapter VIII of the Convention for the Protection of Human Life at Sea of 1960....." Chapter VIII of the referenced Convention specifically excluded "ships of war" from application of the chapter. 536 U.N.T.S. 362 (1965).

88 Art. 31, CNEN-4-71, supra note 84, at 12.

89 Art. 3, Para. 3, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

90 Art. 4, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

91 The unofficial version of the decree appeared in O Estado de Sao Paulo, Mar. 30, 1971. The decree specified that it would be effective on the date of its publication (in Diario Oficial). (hereafter cited as Brazilian Fisheries Decree). Apparently the official version was published in Diario Oficial on June 1, 1971, as that was the effective date of the regulation reported by the Washington Post, June 2, 1971, at A14; and The Christian Science Monitor, June 8, 1971, at 7.

92 Art. I and Art. II, para. 1, ibid.

93 Art. II, para. 2, ibid.

94 Art. II, para. 3, ibid.

95 Art. 5, para. 1, ibid.

96 Art. 5, para. 2, ibid.

97 Art. 5, para. 3, ibid.

98 Art. 7, para. I, ibid.

99 Art. 7, para. II, ibid.

100 Art. 6, ibid.

101 Ibid.

102 Art. 8, ibid. The Article indicates that the entry, position and departure reports are required for the purposes of control of maritime traffic, coastal patrol, Navy Police and search and rescue.

103 Art. 11, para. 5., ibid.

104 Art. 12, ibid.

105 Art. 11, ibid.

106 Washington Post, June 2, 1971, at A14. Two Hundred Miles of Problem, Veja (Sao Paulo weekly magazine), June 9, 1971. (hereafter cited as Veja).

107 Art. 14, Brazilian Fisheries Decree, supra note 91.

108 Washington Post, June 18, 1971, at A23.

109 Id., at A2.

110 Veja, supra note 106.

111 Art. 4, para. 3, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

112
Washington Post, June 2, 1971, at A14. Christian Science Monitor, June 8, 1971, at 7.

113
Art. 4, para. 3, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

114
The Fisheries Case, supra note 22, at 132.

115
Territorial Sea Convention, supra note 6, at 1608.

116
Ibid.

117
Id., at 1610.

118
Id., at 1609. Article 7 further provides for permissible bay closing lines not in excess of 24 miles. When the bay entrance points exceed 24 miles, the line is drawn to enclose as much of the water as is possible within a 24 mile line. Historic bays were excepted from the application of this article.

119
2 League of Nations, Acts of the Conf. for the Codification of Int'l Law, Bases of Discussion, Territorial Waters 35 (1929).

120
The Fisheries Case, supra note 22, at 128.

121
Official Records, General Assembly, Eleventh Sess. Supp. No. 9(A/3159) (1956). (hereafter cited as 1956 International Law Commission Report.)

122
Territorial Sea Convention, supra note 6, at 1608.

123
The Fisheries Case, supra note 22, at 128.

124
Id., at 128-130.

125
G. Fitzmaurice, The Law and Procedure of the International Court of Justice, 1951-54: Points of Substantive Law. 31 Brit. Y. B. Int'l L. 404 (1954). (hereafter cited as Fitzmaurice).

126
Ibid.

127
1956 International Law Commission Report, supra note 121, at 13-15.

128
Ibid.

129
See the portions of Article 4 quoted in the text preceding note 116.

130
L. Teclaff, Shrinking the High Seas by Technical Methods--from the 1930 Hague Conference to the 1958 Geneva Conference, 39 U. Det. L. J. 668 (1962).

131
4 Whiteman, supra note 41, at 337.

132
1956 International Law Commission Report, supra note 121, at 5.

133
3 U.N. Conference on the Law of the Sea, Official Records 241 (1958). (hereafter cited as Official Records, 1958).

134
Id., at 245.

135
Id., at 194.

136
2 Official Records, 1958, supra note 133, at 64.

137
4 Whiteman, supra note 41, at 342.

138
Id., at 343.

139
Ibid.

140
Art. 1, Territorial Sea Convention, supra note 6, at 1608.

141
Id., at 1609.

142
Art. 10, Territorial Sea Convention, supra note 6, at 1609.

143
Id., at 1610.

144
See T. Fulton, The Sovereignty of the Sea, 349-350, 538-558 (1911); P. Jessup, The Law of Territorial Waters and Maritime Jurisdiction 3-7 (1927), (hereafter cited as Jessup); B. Heinzen, The Three-Mile Limit: Preserving the Freedom of the Seas, 11 Stan. L. Rev. 605-612 (1958-59) (hereafter cited as Heinzen).

145
1 Moore, International Law Digest 702, 703 (1906).

146
Heinzen, supra note 144, at 632.

147
Id., at 634.

148
Law on the Extension of the Maritime Customs Zone, 10 Dec. 1909.

149
Heinzen, supra note 144, at 634.

150
Report of the Second Committee (Territorial Sea), 24 Am. J. Int'l L. (Supp.) 235 (1930). (hereafter cited as Report of the Second Committee)..

151
See Annex 111 of Report of the Second Committee, supra note 150, at 253-257 for expressions of the preferences of all delegations regarding the breadth of the territorial sea.

152
Heinzen, supra note 144, at 637.

153
Annex 111, Report of the Second Committee, supra note 150, at 253-257.

154
Id., at 257.

155
Supra note 148.

156
24 Am. J. Int'l L. (Supp.) 184 (1930).

157
Presidential Proclamation 2668, 59 Stat. 885; 10 Fed. Reg. 12304 (1945).

158
Presidential Proclamation No. 2667, 59 Stat. 884; 10 Fed. Reg. 12303 (1945).

159
Supra notes 157 and 158.

160
Cdr. W.R. Palmer, Territorial Sea Agreement - Key to Progress in the Law of the Sea, 25 JAG. J. 71 (Dec.1970-Jan. 1971). (hereafter cited as Palmer.)

161
F.T. Christy, Jr., and A. Scott, The Common Wealth in Ocean Fisheries 162 (1965). (hereafter cited as Christy and Scott).

162
Presidential Declaration with Respect to Continental Shelf 29 October 1945, Laws and Regulations on the Regime of the High Seas, supra note 30, at 13, 14.

163
Decree No. 14,708, concerning National Sovereignty over Epincontinental sea and the Argentine Continental Shelf, 11 October 1946, Laws and Regulations on the Regime on the High Seas, supra note 30, at 4, 5.

164
Presidential Declaration concerning Continental Shelf, 23 June 1947, Laws and Regulations on the Regime of the High Seas, supra note 30, at 6, 7.

165
Presidential Decree No. 781, Concerning Submerged Continental or Insular Shelf, Laws and Regulations on the Regime of the High Seas, supra 30, at 16, 17.

166
Royal Pronouncement concerning the Policy of the Kingdom of Saudi Arabia with Respect of the Subsoil and Seabed of Areas in the Persian Gulf Contiguous to the coasts of the Kingdom of Saudi Arabia, Laws and Regulation on the Regime of the High Seas, supra note 30, at 22.

167
Decree-Law No. 803, Concerning Continental and Insular Shelf, 2 November 1949, Laws and Regulations on the Regime of the High Seas, supra note 30, at 9, 10.

168
Congressional Decree No. 104, Amending the Civil Code, 7 March 1950, Laws and Regulations on the Regime of the High Seas, supra note 30, at 301.

169
Congressional Decree No. 25 (approving Presidential Decree No. 96 of 28 January 1950) 17 January 1951, Laws and Regulations on the Regime of the High Seas, supra note 30, at 302, 303.

170
Declaration of the Governor-General, 9 March 1950, Laws and Regulations on the Regime of the High Seas, supra note 30, at 303.

171
Art. 7, Political Constitution, 7 September 1950, Laws and Regulations on the Regime of the High Seas, supra note 30, at 300.

172
Decree No. 28,840 integrating into national territory the adjoining part of the Continental Shelf, 8 November 1950, Laws and Regulations on the Regime of the High Seas, supra note 30, at 299, 300.

173
Christy and Scott, supra note 161, at 163.

174
See text preceding note 42.

175
Swartztrauber, The Three Mile Limit of Territorial Seas: A Brief History, 379-388 (1970).

176
1956 International Law Commission Report, supra note 121, at 4.

177
Id., at 11.

178
Id., at 10.

179
Id., at 11.

180
Heinzen, supra note 144, at 646.

181
See Dean, The Geneva Conference on the Law of the Sea: What was Accomplished. 52 Am. J. Int'l L. 608-610 (1958).

182
Heinzen, supra note 144, at 642-654.

183
R. Yalem, The International Legal Status of the Territorial Sea, 5 Vill. L. Rev. 206 (1959-60).

184
2 Official Records, 1958, supra note 133, at 39.

185
Id., at 145.

186
G.A. Res. 1307, 13 U.N. G.A.O.R. Supp. 18, at 54.

187
Synoptical Table concerning the breadth and juridical status of the territorial sea and adjacent zones, Official Records, 1960, supra note 44, at 157-163.

188
A. H. Dean, The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas, 54 Am. J. Int'l L. 774 (1960). (hereafter cited as Dean, The Second Geneva Conference.)

189
Official Records, 1960, supra note 44, at 29, 30. Quoted in part on pp. 11, 12, supra.

190
Dean, The Second Geneva Conference, supra note 188, at 779.

191
Id., at 781.

192
Official Records, 1960, supra note 44, at 30.

193
Dean, The Second Geneva Conference, supra note 188, at 782.

194
Official Records, 1960, supra note 44, at 30.

195
Art. 3, Territorial Sea and Fishing Zone Act. 1965.

196
Geographer 1971, supra note 51, at 2.

197
Ibid. Costa Rica had a draft law for a 200-mile territorial sea claim but it was vetoed by the President as being inconsistent with Art. 6 of the Costa Rican Constitution. FAO, Limits and Status of the Territorial Sea, Exclusive Fishing Zones, Fishing Conservation Zones and the Continental Shelf 7 (1969) (hereafter cited as FAO 1969). Art. 6 states, "The state exercises complete and exclusive sovereignty over the air space above its

territory and over its territorial waters and continental shelf, in accordance with principles of international law and with treaties in effect." 4 Peaslee, Constitutions of Nations 328, 329 (3rd. Ed. Rev. 1970).

198 Geographer 1971, supra note 51, at 1.

199 Id., at 2.

200 Decree-Law No. 7 of 27 Jan. 1942.

201 P. D. BARABOLEYA, VOENNO-MEZHDUNARODNO-PRAVOVOY SPRAVOCHNIK (Manual of International Maritime Law (Part II), 317 (1966) (Naval Intelligence Command Translation No. 2500 (a)) (hereafter cited as Manual of Int'l Maritime Law).

202 Geographer 1971, supra note 51, at 2.

203 Ibid.

204 Id., at 3.

205 Dahir No. 1-59-064 of June 30, 1962.

206 Geographer 1971, supra note 51, at 3.

207 Ibid.

208 Reflected in the Communique of the Ministry of Foreign Affairs of the Republic of Viet-Nam issued April 27, 1965, 4 Int'l Legal Mat. 461 (1965).

209 Geographer 1971, supra note 79, at 4.

210 Id., at 3; also Statement of VADM YONG KWAN KIM, South Korea, Chief of Naval Operations, Washington Post, 1 MAR 1968.

211
Geographer 1971, supra note 51, at 3; Decree of 19 March 1951.

212
FAO 1969, supra note 197, at 12.

213
Art. 2, Decree No. 67-334 of 1 Aug. 1967.

214
Art. 1, Territorial and Fishing Waters Act of 15 May 1964. Art. 2 claims a 12-mile territorial sea in the Black Sea. Turkish Gazette of May 25, 1964.

215
Although the Department of State Geographer does not list a territorial sea claim for Portugal my reading of Law No. 2130 on Territorial Waters of August 22, 1966, 5 Int'l Legal Mat. 1094, 1095 (1967), indicates that a territorial sea of 6 miles is claimed.

216
Art. 1, Law No. 186 of 13 Sept. 1967.

217
Art. 3, Territorial Waters Law No. 63-49 of 30 Dec. 1963, The Tunisian Official Journal No. 60 of Dec. 31, 1963.

218
Art. 2. Territorial Waters Act 1963 Government Gazette Extraordinary 12th July 1963, No. 88, 1963, at 2.

219
Decree of 17 Nov. 1958, IRAQ TIMES, 19 Nov. 1958.

220
Geographer 1971, supra note 51, at 3.

221
U.S. Department State, Sovereignty of the Sea Geographic Bull. No. 3, 29 (Rev. 1969) (hereafter refered to as Sovereignty of the Sea, 1969).

222
Art. 1 Decree No. 63-403 of 12 Oct. 1963.

223
Geographer 1971, supra note 51, at 1.

224
1 Decree of 4 Sep. 1958, Bonbal of International Maritime Law, supra note 201, at 389.

225
Law No. 45 of 3 Aug. 1964, Official Gazette, Aug. 6, 1964.

226
Art. 1, Decree of 7 Mar. 1968.

227
Geographer, 1971, supra note 51, at 2.

228
Ibid.

229
Art. 1, Territorial Waters and Continental Shelf Act of 1963.

230
Geographer 1971, supra note 51, at 3.

231
Ibid.

232
Presidential Proclamation concerning the Convention on Territorial Sea and Contiguous Zone of the Republic of Kenya dated June 6, 1969. Kenya's initial claim was for a 3-mile limit. U.S. Dept. State, Sovereignty of the Sea, Geographic Bull. No. 2 (Rev. 1965).

233
Art. 1, Kuwait Decree Fixing Breadth of Territorial Sea, Dec. 17, 1967, Al-Kuwait, Al Yawm, 14th year, No. 658 (Dec. 24, 1967), at 4.

234
Geographer 1971, supra note 51, at 3.

235
Art. 1, Malagasy Republic Territorial Waters, Decree No. 63-131 of 27 Feb. 1963, 277 Journal Officiel de la Republique Malagache 663, (March 9, 1963).

236
Geographer 1971, supra note 51, at 3.

237
Ibid.

238
Art. 3, The Territorial Sea Act. 1970 (Act No. 4, 16th April 1970).

239
The Territorial Waters Decree 1967, Fed. Rep. of Nigeria Official Gazette, Mar. 16, 1967 (Vol. 54, No. 15).

240
Geographer 1971, supra note 51, at 5.

241
Id., at 4.

242
Ibid.

243
Ibid.

244
Law No. 8 of 1970; Id., at 5.

245
Council of Ministers Resolution No. 1047, August 22, 1960.

246
Art. 4, Legislative Dec. No. 304 Concerning the Territorial Sea of the Syrian Arab Republic, 1964.

247
Proclamation by the President of the United Republic of Tanzania of 3 March 1967.

248
Art. 4, Law No. 64/14 on the Regulation of Fishing, July 2, 1964.

249
Art. 3, Act No. 38, An Act to Make Provision with Respect to the Territorial Sea of Trinidad and Tobago, 6th Dec. 1969. Trinidad and Tobago had previously Claimed a 3-mile territorial sea. Sovereignty of the Sea 1969, supra note 221, at 29.

250
Geographer 1971, supra note 51, at 5.

251
Supra note 247.

252
Art. 11, Decree Proclaiming the Law on the Coastal Sea, The Outer Sea Belt, and the Epicontinental Belt of Yugoslavia, Apr. 23, 1965; Press Release No. 307, Apr. 24, 1965.

253
Art. I, Decree No. 3321 of the Presidium of the National Assembly of 1 Sept. 1961, Manual of Int'l Maritime Law, supra note 201, at 345. It is noted that the State Department lists Albania as making a 10-mile territorial sea claim. Geographer 1971, supra note 51, at 1.

254
Decree of 27 September 1969 on the Territorial Sea and Continental Shelf.

255
Geographer 1971, supra note 51, at 1.

256
Proclamation by the Governor General G.G.O. No. W. 57/70, 7 January 1971, The Ceylon Government Gazette Extraordinary No. 14, 939 115, January 8, 1971.

257
Geographer 1971, supra note 51, at 2.

258
Decree of 30 September 1967 FAO 1969, supra note 197, at 12.

259
An Act to Establish and Delimit the Territorial Sea and Contiguous Zone of the Republic of Liberia of 24 June 1968, (July and August) The Liberia Official Gazette Aug.6, 1968.

260
Geographer 1971, supra note 51, at 3.

261
Decree which reforms the first and second paragraphs of fraction II of Article 18 of the General Law of National Wealth, Diario Oficial, Dec. 26, 1969, p.3.

262 Presidential Proclamation of Dec. 28, 1966, Pak Times Dec. 28, 1966.

263 Declaration of Thailand Territorial Waters Limit 6 Oct. 1966, 83 Government Gazette, part 92, 18 Oct. 1966.

264 Proclamation by the Governor General G.G.O. No. W. 57/70, 7 January 1971, The Ceylon Government Gazette Extraordinary No. 14,939,115, January 8, 1971.

265 Decree of 27 September 1969 on the Territorial Sea and Continental Shelf.

266 Geographer 1971, supra note 51, at 2.

267 Act No. 67/IF/25 of Nov. 3, 1967.

268 Council of Ministers Decree of 12 Aug. 1970.

269 Art. 1, Presidential Decree No. 224 of 1 July 1964, Journal Official of July 1, 1964.

270 Para. 2, Declaration of Montevideo on the Law of the Sea, May 1970, 2 J. Maritime L & COM. 223 (1970) (hereafter cited as Montevideo Declaration).

271 Para. 2, Declaration of the Latin American States on the Law of the Sea, 10 Int'l Legal Mat. 207 (1971). (hereafter cited as Latin American Declaration).

272 Art. 3, para. 2, 1956 International Law Commission Report, supra note 121, at 7.

273 Para. 25, Id., at 3. The Commission elaborated further, "Not only may there be wide differences of opinion as to whether a subject is already 'sufficiently developed in practice, but also several of the provisions adopted by

the commission based on a recognized principle of international law' have been framed in such a way as to place them in the progressive development category although it tried at first to specify which articles fell into one and which into the other category the commission has had to abandon the attempt, as several do not wholly belong to either." Para. 26, Id., at 3.

274 Id., at 12.

275 Official Records, 1960, supra note 44, at 157-163.

276 Geographer 1971, supra note 51, at 1-5.

277 Address by John R. Stevenson, American Society of International Law Annual Meeting, Apr. 29, 1971.

278 Jessup, supra note 144, at 66.

279 24 Am. J. Int'l L. (Supp.) 251 (1930).

280 1956 International Law Commission Report, supra note 121, at 5.

281 Id., at 16.

282 Art. 10, Territorial Sea Convention, supra note 6.

283 Colombos, supra note 10, at 120.

284 24 Am. J. Int'l L. (Supp.) 234 (1930).

285 Ibid.

286 Ibid.

287 Ibid.

288 The Fisheries Case, supra note 22, at 132.

289 Id., at 133.

290 Ibid.

291 Id., at 142.

292 Fitzmaurice, supra note 125, at 404.

293 1956 International Law Commission Report, supra note 121, at 24.

294 Ibid.

295 Ibid.

296 Ibid.

297 Id., at 7.

298 Id., at 26.

299 Id., at 9.

300 Id., at 32.

301 Art. 2, High Seas Convention, supra note 5, at 2314.

302 Art. 8, Id., at 2315.

303
Fishing Convention, supra note 7, at 140.

304
Art. 6, Id., at 141.

305
Ibid.

306
Basic principle 6, Montevideo Declaration, supra note 270, at 224. Common principle 3, Latin American Declaration, supra note 271, at 208.

307
Art. 2, Territorial Sea Convention, supra note 6, at 1608.

308
3 U.S. Treaties, Conventions, International Acts, Protocols, and Agreements 3768 (1910-1923).

309
Id., at 3772, 3773.

310
Jessup, supra note 144, at 116, 117.

311
24 Am J. Int'l L. (Supp.) 240 (1930).

312
Ibid.

313
Art. 2, Commentary, 1956 International Law Commission Report, supra note 121, at 12.

314
1 Oppenheim, supra note 9, at 523.

315
Art. 11, Restatement, supra note 19, at 33. The Comment following Article 16 states that there is no right of innocent passage for planes in the airspace of a state, even above its territorial sea. Id., at 43.

316
Jessup, supra note 144, at 14. See also C. Hurst, Whose Is the Bed of the Sea? 4 Brit. Y. B. Int'l L. 37 (1923-24).

317
1 Oppenheim, supra note 9, at 501, 502.

318
Colombos, supra note 10, at 88.

319
See D. Trocki, Man of War in Territorial Waters, 31 August 1968 (unpublished thesis in George Washington University, National Law Center Library).

320
Territorial Sea Convention, supra note 6, at 1610-1612.

321
Id., at 1610.

322
Id., at 1611.

323
Ibid.

324
Id., at 1612.

325
Art. 3, para. 2, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

326
High Seas Convention, supra note 5, at 2319.

327
Ibid.

328
International Convention for the Safety of Life at Sea, 1960, June 17, 1960 (1965) Ch. 8, 16 U.S.T. 538, T.I.A.S. 5780. (hereafter cited as Safety of Life at Sea Convention).

329
Ch. 8, reg. 1, ibid.

330
Jessup, supra note 144, at 120.

331
Ibid.

332
Ibid.

333
Id., at 121.

334
Ibid.

335
Id., at 122, 123.

336
24 Am. J. Int'l L. (Supp.) 234 (1930).

337
Id., at 241.

338
Ibid.

339
Ibid.

340
Id., at 242.

341
Ibid.

342
Ibid.

343
Id., at 246.

344
Id., at 247.

345
Ibid.

346
Commentary to Article 15, 1956 International Law Commission Report, supra note 120, at 19.

347 1956 International Law Commission Report, supra note 121, at 19.

348 Id., at 20.

349 See text of proposed Art. 6 in innocent passage international custom sub-section.

350 1956 International Law Commission Report, supra note 121, at 20.

351 Oppenheim, supra note 9, at 493.

352 Ibid.

353 Ibid.

354 Id., at 494.

355 Id., at 495.

356 Restatement, supra note 19, at 148.

357 Id., at 171.

358 Colombos, supra note 10, at 87.

359 Id., at 133.

360 Id., at 315.

361 Id., at 132.

362 Territorial Sea Convention, supra note 6, at 1608.

363
Id., at 1610.

364
See the coastal state rights provided in the proposed article 6, previously quoted in the text. The Article further indicates that the coastal state may not discriminate between foreign vessels and national vessels except in matters relating to fishing and shooting. 24 Am. J. Int'l L. (Supp.) 242 (1930).

365
1956 International Law Commission Report, supra note 121, at 20.

366
Sec. 45 F. provides that, "A foreign fishing vessel is not in innocent passage if it does not observe laws enacted by the coastal state to prevent foreign fishing vessels from fishing in its territorial sea." Restatement supra note 19, at 150.

367
"There is general agreement as to the following principles with regard to fisheries.... within the maritime belt. (1) The littoral State may reserve the fisheries within the maritime belt exclusively for its own subjects, whether fish or pearls or other products of the sea are under consideration." 1 Oppenheim, supra note 9, at 492, 493.

368
"The rule gradually developed in customary international law that a nation could exclude foreigners from fishing within its lakes, rivers, and territorial waters, i.e., that part of the ocean under its exclusive jurisdiction." W. Bishop Jr., The 1958 Geneva Conference on Fishing and Conservation of the Living Resources of the High Seas, 62 Colum. L. R. 1208 (1962).

369
"In the open seas fishing is absolutely free to all. Within territorial waters however, each State is entitled to enact regulations reserving to its nationals the right of fishing or restricting its exercise within specified limits." Colombos, supra note 10, at 147.

370 Manchester v. Massachusetts, 129 U.S. 240, 257 (1891).

371 Arts. 1 and 2, Territorial Sea Convention, supra note 6, at 1608.

372 Arts. 24 and 25, High Seas Convention, supra note 5, at 2319.

373 Art. 14(5), Territorial Sea Convention, supra note 6, at 1610.

374 I.e. Arts. 14(4) and 16(3), Territorial Sea Convention, supra note 6, at 1610, 1611.

375 Art. 14(3), id., at 1610.

376 Arts. 1 and 2, Continental Shelf Convention, supra note 8, at 473.

377 Jessup, supra note 144, at 118, 119.

378 President's Science Advisory Committee, Effective Use of the Sea, 91 (1966).

379 W. Burke, Contemporary Legal Problems in Ocean Development Towards a Better Use of the Ocean, 117 (1969). (hereafter cited as Burke).

380 Art. 1 Brazilian Territorial Sea Decree-Law, supra note 70, at 1.

381 Art. 3, Territorial Sea Convention, supra note 6, at 1608.

382 See text on normal baseline customary law.

383
Art. 1, sole paragraph, Brazilian Territorial Sea Decree-Law, supra note 70, at 1.

384
See text on straight baseline customary law. Additionally an interview with Mr. Hodgson, U.S. State Department Geographer, advised that his office does not intend to make a boundary study of Brazil's baseline claim as there is, in his view, clearly no legal problem with the manner in which they are drawn.

385
Art. 2, Brazilian Territorial Sea Decree-Law, supra note 70, at 1.

386
Territorial Sea Convention, supra note 6, at 1608.

387
Brazilian Territorial Sea Decree-Law, supra note 70, at 1.

388
Territorial Sea Convention, supra note 6, at 1610.

389
See text on innocent passage international custom.

390
Art. 2, para. 1, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

391
Territorial Sea Convention, supra note 6, at 1610.

392
Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

393
CNEN-4-71, supra note 84.

394
Territorial Sea Convention, supra note 6, at 1610.

395
Art. 5, 24 Am. J. Int'l L. (Supp.) 241 (1930).

396
Restatement, supra note 19, at 148.

397
Colombos, supra note 10, at 315.

398
1 Oppenheim, supra note 9, at 493.

399
Jessup, supra note 144, at 122, 123.

400
24 Am. J. Int'l L. (Supp.) 242 (1930).

401
1956 International Law Commission Report, supra note 121, at 20.

402
The status of the coastal State rights under international law was included in the "Observations" to the proposed Article 6 rather than in the body of the Article. 24 Am. J. Int'l L. (Supp.) 242 (1930).

403
Oil Pollution Act, 1924, 33 U.S.C. 431-437.

404
Art. 31, CNEN-4-71, supra note 84, at 12.

405
High Seas Convention, supra note 5, at 2319.

406
See Commentary to draft Art. 48, 1956 International Law Commission Report, supra note 121, at 31.

407
Art. VI, Agreement with Denmark concerning visits of N. S. Savannah, July 2, 1964, 15 U.S.T. 1404, T.I.A.S. 5612.

408
CNEN-4-71, supra note 84, at 2.

409
Ibid.

410
Safety of Life at Sea, supra note 328.

411
Art. 3, para. 3, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

412
Art. 7, Regulations Governing Visits By Foreign Warships to Brazilian Ports and Territorial Waters in Time of Peace, Annexed to Decree No. 24063 of 29 March 1934, Laws and Regulations on the Regime of the High Seas, supra note 30, at 365.

413
Art. 3, Circular Annexed to Legislative Decree No. 1561 of 2 September 1939, as Amended, Id., at 621.

414
See Art. 14(6), Territorial Sea Convention, supra note 6, at 1610; Art. 15(5), 1956 International Law Commission Report, supra note 121, at 19; Proposed Art. 12, Second Committee, 1930 Hague Conference, 24 Am. J. Int'l L. (Supp.) 246(1930).

415
Restatement, supra note 19, at 171.

416
1956 International Law Commission Report, supra note 121, at 23.

417
Ibid.

418
Id., at 22.

419
Art. 23, Territorial Sea Convention, supra note 6, at 1612.

420
Id., at 1610.

421
Id., at 1611.

422
24 Am. J. Int'l L. (Supp.) 241 (1930).

423 Jessup, supra note 144, at 120.

424 Id., at 120, 121.

425 1 Oppenheim, supra note 9, at 491.

426 Colombos, supra note 10, at 132.

427 Art. 4, Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

428 Supra note 91.

429 See discussion in section IV E., supra.

430 Brazilian Territorial Sea Decree-Law, supra note 70, at 2.

431 Burke, supra note 379, at 117.

432 Sovereignty of the Sea, 1969, supra note 221, at 19.

433 See discussion by Second Committee, 1930 Hague Conference. 24 Am. J. Int'l L. (Supp) 234 (1930).

434 The Fisheries Case, supra note 21, at 132.

435 Preamble, Brazilian Territorial Sea Decree-Law, supra note 70, at 1.

436 The Fisheries Case, supra note 21, at 142.

437 1969 Statistical Yearbook 137, U.N. Pub. Sales No.: E/F 70. XVII.1 (1970). (hereafter cited as 1969 Statistical Yearbook.)

438 Brazilian Bulletin, Jan. 1971, at 3, col. 4.

439 1969 Statistical Yearbook, supra note 437, at 137.

440 Brazilian Bulletin, Jan. 1970, at 3, col.4.

441 Brazilian Bulletin, Mar. 1971, at 7, col.2.

442 Id., at col. 1.

443 Christy and Scott, supra note 161, at 143.

444 Brazilian Bulletin, Jan. 1970, at 3, col. 4; Brazilian Bulletin, Mar. 1971, at 7, col. 1.

445 Ibid.

446 Brazilian Bulletin, Mar. 1971, at 7, col. 3.

447 Id., at col. 2.

448 Ibid.

449 Id., at cols. 2 and 3.

450 Veja, supra note 106.

451 Art. 2, Continental Shelf Convention, supra note 7, at 473.

452 Art. 1, Ibid.

453 Continental Shelf Cases, supra note 23, at 357.

454
The Continental Margin consists of the Continental Shelf which extends to an average depth of 200 meters, the continental slope which goes to a depth generally ranging from 1,400 to 3,200 meters, and the continental rise further extends to an average depth of 4,000 meters where it becomes the deep sea bed. Special Subcommittee on Outer Continental Shelf, Senate Committee on Interior to Insular Affairs, 91ST. Cong., 2D SESS., Report on Outer Continental Shelf 222 (Comm. Print 1971). (hereafter cited as Outer Continental Shelf Report).

455
Address by John R. Stevenson, Legal Adviser, Dept. State, Indian Society of International Law, New Delhi, Feb. 9, 1971.

456
Ibid.

457
Outer Continental Shelf Report, supra note 450, at 220.

458
Brazilian Bulletin, Feb. 1971, at 4, col. 4

459
Ibid.

460
Veja, supra note 106.

461
Vol. D, Worldmark International Documentation, Sea-bed 1968, at 243 (1970).

462
Address by Dr. Arvid Pardo, U.N. Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction, Geneva, Mar. 23, 1971. (hereafter cited as Pardo).

463
Vol. D, Worldmark International Documentation Sea-bed 1968, at 521 (1970).

464
Veja, supra note 106.

465
Ibid.

466
Washington Post, June 2, 1971, at A14.

467
Veja, supra note 106.

468
Ibid.

469
Art. 2, High Seas Convention, supra note 5, at 2314.

470
Washington Post, June 2, 1971, at A14.

471
Public Order of the Oceans, supra note 1, at 72.

472
Art. 16(3), Territorial Sea Convention, supra note 6, at 1611.

473
Art. 20, Territorial Sea Convention, supra note 6, at 1612.

474
The example of a jet aircraft bound from Tehran to Tel Aviv, which must fly an extra 245 miles or about 30 minutes more to avoid flying over Iraq and Syria is cited in Sovereignty of the Sea, 1969, supra note 221, at 10.

475
1956 International Law Commission Report, supra note 121, at 24.

476
Address by John R. Stevenson, Enlarged U.N. Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, Subcommittee I, Mar. 25, 1971. Veja, supra note 106, indicated that the 200 mile sea perfectly encompassed the whole Brazilian continental shelf, going even further in some areas.

477
For example, The Argentine Government reported an unidentified submarine was sunk within her territorial waters on May 21, 1958. N.Y. Times, May 24, 1958, at 1, col.6.

478
K. Lawrence, Military-Legal Considerations in the Extension of the Territorial Seas, 29 Mil. L. Rev. 91 (1965). (hereafter cited as Lawrence).

479
Veja, supra note 106.

480
Ibid.

481
Arts. 1 and 2, Continental Shelf Convention, supra note 8, at 473.

482
H.G. Knight, The Law of the Sea 417 (1969).

483
G.A. Res. 2574 A, 24 U.N. G.A.O.R. Supp. 30, at 10.

484
G.A. Res. 2574 D, 24 U.N. G.A.O.R. Supp. 30, at 11.

485
U.N. Charter Art. 2, para. 2.

486
G.A. Res. 2340, 22 U.N. G.A.O.R. Supp. 16, at 14.

487
G.A. Res. 2467, 23 U.N. G.A.O.R. Supp. 18, at 15.

488
Lawrence, supra note 478, at 66, points out the surveillance problems in a 12 mile territorial sea from the point of view of the warship.

489
Although Brazil apparently believes that it can police the 900,000 square miles of territorial waters, other military sources say that even the United States or Soviet Union could not effectively control such a vast area. Washington Post, June 2, 1971, at A14.

490
U.N. Charter Art. 51: Colombos, supra note 10, at 315. See W.T.. Mallison, Jr., Limited Naval Blockade or Quarantine Interdiction: National and Collective Defense Claims Valid Under International Law, 31 Geo. Wash. L. Rev. 344-364 (1962-1963).

491
Fisheries Case, supra note 22, at 142.

492
1 Hyde, supra note 17, at 11.

493
Washington Post, June 2, 1971, at A14. Veja, supra note 106.

494
Veja, supra note 106.

495
Ibid.

496
Preamble, Brazilian Territorial Sea Decree-Law, supra note 70, at 1. This portion of the preamble is derived from the 1956 Council of Jurists, meeting in Mexico City, adopted by a vote of 15 to 1. The problem with this resolution is that is was adopted without any preliminary study by the Council's Permanent Committee, there was no discussion of the issues raised by the resolution and the proponents of the resolution made no explanation or justification of its contents. Questions regarding the resolution were unanswered and appeals for more time in which to consider the resolution were denied. 34 Dep't State Bull. 295, 297 (1956).

497
Fisheries Case, supra note 22, at 132.

498
Pardo, supra note 462.

499
G.A. Res. 2574D, 24 U.N. G.A.O.R. Supp. 30, at 11.

500
A NOTICIA was so characterized by Veja, supra note 106.

501
Veja, supra note 106.

502
22 U.S.C. 2753(b).

503
Washington Post, June 10, 1971, at A30, col. 1.

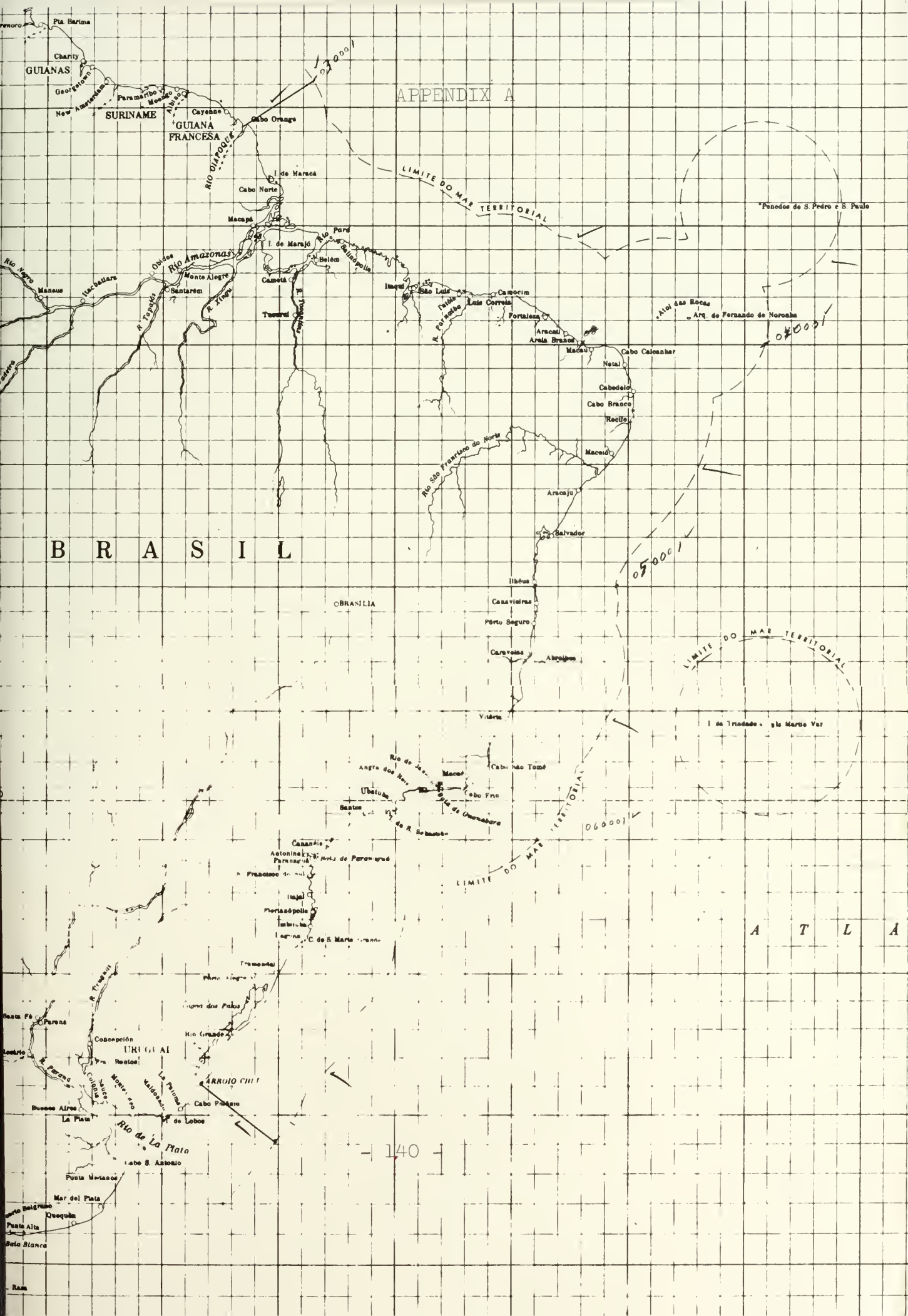
504
Presidential Announcement on U.S. Oceans Policy, Press Release of Saturday, May 23, 1970 at 11:00 A.M. See also Summary of Provisions of Draft "United Nations Convention on the International Seabed Area" prepared by John R. Stevenson, Legal Adviser, Department of State, Aug. 3, 1970.

505
Veja, supra note 106, stated, "At any rate, by declaring their sovereignty as far as 200 miles from the coast, Brazil and all the developing countries gain a new card for international negotiations. When they come around to discussing problems of exploration and utilization of the surface and bottom of the sea they will go to the conference table with the weight of established sovereignty behind their claims."

506
Public Order of the Oceans, supra note 1, at 52.

APPENDIX A

Brazilian Territorial Sea Chart No. 13001


Pta Barima
Charity
GUIANAS
Georgetown
New Amsterdam
Paramaribo
Moengo
Albina
SURINAME
Cayenne
GUIANA FRANCESA
Cabo Orange
RIO OIAPOQUE
I de Maraca
Cabo Norte
Macapá
I. de Marajó
Rio Pará
Belém
Salinópolis
Rio Amazonas
Obidos
Monte Alegre
Santarém
Manaus
Itacoatiara
Rio Negro
R. Tapajós
R. Xingu
Tucuruí
Rio Tocantins
Caxias
Camocim
São Luis
Parnaiba
R. Parnaiba
Luis Correia
Fortaleza
Aracati
Areia Branca
Macau
Cabo Calcanhar
Natal
Cabedelo
Cabo Branco
Recife
Maceió
Rio São Francisco do Norte
Aracaju
Salvador
Ilhéus
Canavieiras
Pôrto Seguro
Caravelas
Abrolhos
Vitória
BRASILIA
Penedos de S. Pedro e S. Paulo
Atol das Rocas
Arq. de Fernando de Noronha
I. da Trindade e Ilhas Martin Vaz
LIMITE DO MAR TERRITORIAL
B R A S I L
Rio de Janeiro
Angra dos Reis
Macaé
Cabo Frio
Cabo São Tomé
Ubatuba
Santos
Ilha de Queimada
Canandéia
Antonina
Paranaguá
Ilha de Paranaguá
Imbital
Florianópolis
Laguna
C. de S. Maria
Tramandaí
Pôrto Alegre
Lagoa dos Patos
Rio Grande
Santa Fé
Parana
Concepción
URUGUAI
Pta. Rieles
R. Paraná
Colonia
Sauce
Montevideo
Maldonado
La Paloma
ARROIO CHUI
Buenos Aires
La Plata
Cabo Polonio
I. de Lobos
Rio de La Plata
Cabo S. Antonio
Punta Medanos
Mar del Plata
Quequén
Punta Alta
Bahia Blanca
A T L A
- 140 -

Appendix B

Global Effect of 700 Nautical Mile Territorial Sea Claims

Global Effect of 200 Nautical Mile Territorial Sea Claims

MERCATOR PROJECTION

150° 135° 120° 105° 90° 75° 60° 45° 30° 15° 0° 15° 30° 45° 60° 75° 90° 105°

84° 80° 75° 70° 60° 45° 30° 15° 0° 15°

GREENLAND

ICELAND

U.S.

CANADA

UNITED STATES

MEXICO

CUBA

DOMINICAN REPUBLIC

HAITI

BRITISH HONDURAS

HONDURAS

GUATEMALA

EL SALVADOR

NICARAGUA

COSTA RICA

CANAL ZONE

PANAMA

VENEZUELA

GUYANA

SURINAM

FRENCH GUIANA

COLOMBIA

ECUADOR

NORWAY

SWEDEN

FINLAND

UNION OF SOVIET SOCIALIST REPUBLICS

DENMARK

UNITED KINGDOM

IRELAND

NETH.

BELG.

LUX.

FED. REP. OF GER.

E. GER.

POLAND

CZECH.

AUSTRIA

HUNGARY

FRANCE

ROMANIA

YUGOSLAVIA

BULGARIA

ITALY

ALBANIA

GREECE

SPAIN

PORTUGAL

TURKEY

CYPRUS

SYRIA

LEBANON

ISRAEL

IRAQ

JORDAN

KUWAIT

IRAN

AFGHANISTAN

PAKISTAN

CHINA

NEPAL

BHUTAN

SIKK.

INDIA

BURMA

LAOS

THAILAND

MOROCCO

SPANISH SAHARA

ALGERIA

LIBYA

U.A.R.

SAUDI ARABIA

YEMEN

SOUTHERN YEMEN

MAURITANIA

MALI

NIGER

CHAD

SUDAN

ETHIOPIA

SOMALIA

SENEGAL

GAMBIA

PORTUGUESE GUINEA

GUINEA

UPPER VOLTA

DAHOMEY

NIGERIA

SIERRA LEONE

LIBERIA

IVORY COAST

GHANA

TOGO

CAMEROON

CENTRAL AFRICAN REPUBLIC

EQUATORIAL GUINEA

GABON

REP. OF CONGO

DEMOCRATIC REPUBLIC OF THE CONGO

UGANDA

KENYA

RWANDA

BURUNDI

CEYLON

MALAYSIA

INDONESIA

MONGOLIA
CHINA
N. KOREA
S. KOREA
JAPAN
AFGHANISTAN
PAKISTAN
NEPAL
BHUTAN
PAK.
INDIA
BURMA
TAIWAN
LAOS
N. VIETNAM
THAILAND
S. VIETNAM
CAMBODIA
PHILIPPINES
CEYLON
MALAYSIA
INDONESIA
TERRITORY OF PAPUA AND NEW GUINEA
PORT TIMOR
AUSTRALIA
NEW ZEALAND
ANTARCTICA
UNITED STATES
MEXICO
CUBA
DOMINICAN REPUBLIC
HAITI
BRITISH HONDURAS
HONDURAS
GUATEMALA
EL SALVADOR
NICARAGUA
COSTA RICA
CANAL ZONE
PANAMA
VENEZUELA
GUYANA
SURINAM
FRENCH GUIANA
COLOMBIA
ECUADOR
PERU
BRAZIL
BOLIVIA
PARAGUAY
CHILE
ARGENTINA
URUGUAY

45° 30° 15° 0° 15° 30° 45° 60° 70°

65° 75° 90° 105° 120° 135° 150° 165° 180° 165° 150° 135° 120° 105° 90° 75° 60° 45°

Source of data: Office of the Geographer, Dept. of State

BOUNDARY REPRESENTATION IS NOT NECESSARILY AUTHORITATIVE

BOUNDARIES

Boundaries shown on this chart should not be regarded as having official significance

- International Boundary
- Unsettled boundary claims
- Regional or Internal Boundaries

78454 7-70

UNITED STATES
MEXICO
CUBA
DOMINICAN REPUBLIC
HAITI
BRITISH HONDURAS
HONDURAS
GUATEMALA
EL SALVADOR
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CANAL ZONE
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COLOMBIA
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PERU
BRAZIL
BOLIVIA
PARAGUAY
CHILE
ARGENTINA
URUGUAY
UNITED KINGDOM
IRELAND
NETH.
BELG.
LUX.
FED. REP. OF GER.
E. GER.
POLAND
CZECH.
AUSTRIA
HUNGARY
FRANCE
ROMANIA
YUGOSLAVIA
BULGARIA
ITALY
ALBANIA
GREECE
SPAIN
PORTUGAL
TURKEY
CYPRUS
SYRIA
LEBANON
ISRAEL
IRAQ
JORDAN
KUWAIT
IRAN
CHINA
AFGHANISTAN
PAKISTAN
NEPAL
BHUTAN
PAK.
INDIA
BURMA
LAOS
THAILAND
CEYLON
MALAYSIA
INDONESIA
MOROCCO
SPANISH SAHARA
ALGERIA
LIBYA
U.A.R.
SAUDI ARABIA
YEMEN
SOUTHERN YEMEN
MAURITANIA
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MALAWI
SOUTHERN RHODESIA
MOZAMBIQUE
MALAGASY REPUBLIC
SOUTH-WEST AFRICA
BOTSWANA
SWAZILAND
SOUTH AFRICA
LESOTHO
ANTARCTICA

BOUNDARY REPRESENTATION IS NOT NECESSARILY AUTHORITATIVE

150° 135° 120° 105° 90° 75° 60° 45° 30° 15° 0° 15° 30° 45° 60° 75° 90° 105°

70° 60° 45° 30° 15° 0° 15° 30° 45°

Thesis
K5724 Kjos
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Brazilian claims to a 200 mile territorial sea; appraisal in public international law.